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VALIDITY OF RESERVATIONS TO INTERNATIONAL TREATIES

Master's Thesis

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INTRODUCTION

"Even though, or precisely because, the Vienna Conventions did not establish mechanisms for assessing the validity of a reservation – that is, whether a reservation meets the criteria for permissibility set out in article 19 and the conditions for validity – each State and each international organization, individually and from its own standpoint, is responsible for assessing the validity of a reservation."[1] The objective of this master's thesis is to propose a reasonable and acceptable solution to the problem of the validity of reservations to international treaties. The juridical problem embodies in the fact that in this day and age States and other actors of international law are continuously composing reservations to international treaties which oftentimes clearly, and sometimes less clearly contradict the aim and purpose of the treaty. Such practice, according to the Article 19 of the Vienna Convention, which lays out the fundamental requirements of formulating a reservation, in subparagraph (c) states that if the reservation is incompatible with the object and purpose of the treaty, it may not be formulated.

The causatum of this thesis could feasibly become beneficial to all States and other actors of international law which are directly or indirectly bound or otherwise affected by treaties which lack the juridical requirements regarding reservations composed to them, and perhaps be adopted as an applicable provision of international law by States in the future. The objective of the current work is to find a practical solution through the investigation of the theory of international law, the practice of States and other actors of international law; and finding out, then via a theoretical proposal opting out the loopholes of law regarding the chosen topic by critically drawing attention to existing problems in practice and theory with regards to the validity of reservations to international treaties.

Something philosophically simple, at first glance perhaps even seemingly trivial, might turn into a rather complex issue when enquiring deeper into the question of the validity of reservations to international treaties. Research questions that shall be examined throughout this work are

[1] A. Pellet. Seventeenth report on reservations to treaties. A/CN.4/647. Geneva: United Nations 2011, p. 8.

simultaneously theoretical, philosophical and practical, deriving from the practice of States and suggestions of *lex scripta*:

1. Coming into an agreement of the meaning of certain words, terms or a treaties aim should not be as problematic as it is in the practice of international law. If a "norm" carries the meaning of an "accepted standard", then why do States apprehend, therefore also operate with international legal norms in such remarkably different manners compared to each other, causing innumerable international disputes?
2. What gives States the liberty of interpretation in this matter – and would the system work more advantageously towards a common goal of an international treaty if States did not carry such a privilege?
3. If, in accordance with the Vienna Convention on the Law of Treaties and with a number of international treaties on their own, certain reservations are not permitted, e.g. the ones that contradict the aim and purpose of the treaty, why are they allowed by States in practice at the time of the conclusion of treaties and from there on?
4. Are reservations, in the latter case, legally valid or invalid?
5. How to prevent States from using the practice of interpretation of treaties and making reservations to them in the direction of attaining malevolent results? Is a consensus in this matter viable?

This master's thesis will be devoted to reach a potential solution to the problem of international law – the validity of reservations to international treaties. The question which qualities are necessary for a reservation to be valid as well as the validity of existing contradicting reservations to certain treaties will be critically observed. Through analytical method current issues will be evaluated in order to clarify to the problem with the aim to find a solution for the practice of the making of reservations in accordance with international law today. The practice has proven to be too flexible as numerous reservations which contradict the aim and purpose of a given treaty are today in force. The thesis will bring to light numerous vivid examples of violations from international law practice regarding the making of reservations to international treaties and question the validity of these reservations taking into account the distinction between interpretable rights and reservations. Attention will be paid to the substantive issue of the validity of such

reservations regarding the cultural-historical background of States which brings with it not only a different kind of interpretational result at times, but also makes one ask the question whether international lawyers can, if differences and accents derived from cultural-historical backgrounds of actors are accepted, talk of universal international law and in particular universal human rights whatsoever. How can international law potentially protect this delicate subject to the fullest when it comes to the question of reservations to treaties?

The topic at hand is researched owing to the reason that there is no existing valid solution to this issue at this time, yet the global community struggles with an apparent need for one. The aim of the master's thesis is to investigate further the vocal points of the issue and to achieve the necessary results working through this path in order to propose a useful solution to the problem of international law.

The problem of the practice of composing reservations to treaties is a typical 'lost in translation' situation which should not be succumbed to. The fact that reservations to treaties which contradict the aim and purpose of the treaty are allowed by States constitutes to the fact that invalid reservations are not allowed on paper, but are *per contra de facto*. From this point of view, there is no formal logic in this practice. The consequences of the thus far unsolved issue which leads to serious disputes between treaty parties can and usually do come at high costs to States and International Organizations which are directly involved with a concrete dispute, but also other actors of international law are certainly affected by them, as all actors and acts of international law are, ultimately, interconnected. The theory of international law affects the practice of international law, and vice versa. International law needs more precision, and that, certainly, can only be achieved through the practice of coherent and consistent international law, which unfortunately is constantly downgraded by characteristics common to soft law: excessive flexibility, impreciseness, and State's disorderly attitude towards valid provisions of international law. The epidemic confusion which can be monitored in dialogues between actors of international law illustrates with its feuds sometimes the absurdity of disputes that could be avoided largely if only States had a unitary understanding of the law of higher quality, which can only be attained through clear provisions, defenceless to arbitrary dialogues derived from self-proclaimed rendering of norms. The latter word's definition is fading. A legal system must demonstrate specific conformity

with morality or justice, or must rest on a widely diffused conviction that there is a moral requirement to obey it.[2]

Yet, what is law? In brief, it's a composition of legal norms, frequently derived from societally accepted moral norms which have found repetitive practice and endorsement of actors of law. When we understand rules we will find that they are the vital for explaining numerous phenomena in law — sovereignty, powers, jurisdiction, authority, courts, laws, legal systems – and even, argues Hart, one kind of justice. Validity is amongst these qualities.[3] But law is not just a system of rules; it is a system that serves various purposes. Thomas Aquinas contemplated that law has an overall purpose for it as well — 'an ordinance of reason made for the common good.' Modern proposals in this regard include the idea that law is designed for guiding behaviour, for coordinating activity for the common good, to ensure justice, or for licensing coercion.[4] These claims should be comprehended as constitutive purposes of law in opposite to seeing them as mere recommendations.[5]

The fundamental foundation of law is in crisis. Domestic laws are, in most parts of the world, strict and comprehensive – for what reason is such unruliness considered acceptable when it comes to international law, especially given that so much is at stake regarding the use of this branch of the law? Examples of this "weak" or "soft law" as it is labelled at times do not have to be sought from afar.[6] The 1963 Moscow Treaty banning certain nuclear weapon tests, Article IV of which provides, *inter alia*, that "each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country" provides an example of soft law in an extreme, or even an explosive situation. The numerous treaty provisions according to which the parties undertake merely to enter into negotiations or to consult together with a view to settle certain problems by a subsequent agreement; as well as the hortatory or exhortatory provisions whereby they agree to "seek to", "make efforts to", "promote", "avoid", "examine with

[2] H. L. A. Hart. The Concept of Law. 3rd Ed. Oxford: Oxford University Press 2012. p. 185.
[3] *Ibid*., p xx.
[4] *Ibid*., p. xxxiv.
[5] H. L. A. Hart, p. xxxiv.
[6] R. R. Baxter. International Law in ''Her Infinite Variety.'' — International and Comparative Law Quarterly 1980/29 (4), p. 548 *et seq*.

understanding," "act as swiftly as possible," "take all due steps with a view to," are certainly examples of soft law,[7] which to a critical observer can awaken doubts whether it is law at all. This suggestive multi-interpretable and overly open to argumentation style of expression in legal texts, as seen in a more recent analysis of international law, has not vanished anywhere over an exceedingly extended period of time. In the Seventeenth report on reservations to treaties, Special Rapporteur Alain Pellet states that "the present report includes a few reflections that may result in the adoption of flexible normative suggestions that would help guide the practice of States and international organizations on the topic."[8] This particular sentence could not possibly exercise more flexibility. But how much flexibility is desirable? The VCLT Articles 31 to 33 are quite flexible leaving plenty of room for interpretation. Treaty interpretation is ultimately linked to the rules set out in the convention and thus the flexibility would not go beyond the *bona fide* prerequisite and other elements set out therein. The flexibility can be perceived as "qualified flexibility" due to the fact that the interpretation is bound by the fundamental rules provided in convention's Articles 31 and 32[9] according to which the object and purpose of a treaty are of primary importance, ordinary meaning must be given to terms in their context, and in case after careful interpretation the result still holds ambiguous, supplementary means of interpretation may be exercised. The result of interpretation must not be absurd or unreasonable nor ambiguous or obscure.

Literature that has been worked through for this master's thesis includes the International Law Commission's (hereinafter also ILC) Reports on reservations to treaties by Alain Pellet, Special Rapporteur. His Seventeenth report on reservations to treaties, written exactly a decade ago has thoroughly been examined. The substantive writings on the topic give a wide understanding of the issues regarding reservations to treaties. Alain Pellet has successfully established a clear overview of principal concerns regarding the making of reservations to treaties and the ILC has given useful recommendations to States. Yet the problem remains unsolved. Identifying problems is an essential part of finding a solution to the problem of international law, but it's not definitive. The

[7] P. Weil. Towards relative normativity in international law? — The American Journal of International Law 1983/77 (3), p. 414.
[8] A. Pellet, p. 2.
[9] Chang-fa Lo, Treaty Interpretation Under the vienna Convention on the Law of Treaties. A New Round of Codification. Singapore: Springer Nature 2017, pp. 296-297.

approach taken seems not to be efficient enough as States and international organizations have maintained the same dialogue where there perhaps should not be any – the questions actors of international law have today regarding reservations could and should already have been solved. The hectic practice which's results hence can never be predicted at this time remains unclear of structure and preciseness. It cannot be ruled out that, besides to the lack of legal bindingness, the substantive problem here is also the use of language.

In addition to Mr. Pellet's reports, his predecessors' reports were considered. Various substantive ideas from the past were rediscovered and as found sympathetic and valuable in essence, reading the ideas of Special Rapporteurs Mr. Gerald Gray Fitzmaurice, Mr. James L. Brierly, Sir Hersch Lauterpacht and Sir Humphrey Waldock helped form a possible solution to the problem the international law community faces today. The voyage through the history of reservations was truly useful as well as fascinating. The expressed ideas were mostly supportive of each other, and taking into account the practices regarding reservations to treaties today, vastly different. The alterations between modern practice and the ideas proposed in history created plenty of professional elation in the quest of solving the juridical problem.

A very substantive work on the topic – "The Vienna Conventions on the Law of Treaties, A Commentary", edited by Oliver Corten and Pierre Klein, was found rather concise and important for this thesis. As well as it reflected the interpretations of the authors of the commentaries, which at rarer occasions were found controversial and underprovided, the book is a masterwork in its volume and the devotion the authors and editors have given to it. There are many very good legal analysis. Were it to be an official guideline for actors of international law on how to navigate in the sphere, in which way to interpret and apply the law of the treaties, perhaps a second thought should be given to it. At times it seemed that the authors had perhaps interpreted the commented documents original authors' ideas faintly spontaneously and the results hence could gravely vary where the same task given to a different researcher. For example, on a few occasions it was impenetrable on how the interpreter came to a certain conclusion as having read also the original reports commented on within the book, the presented ideas were not found. For instance, on the proposal for the first standalone provision on the legal effects of a reservation – "G. G. Fitzmaurice did not comment on his draft and explained that 'it is considered useful to state these consequences,

but they require no explanation"[10] The latter comment leads back to Fitzmaurice's First Report, A/CN.4/101[11], where such a comment is inexistent.

Jan Klabbers's "The Concept of Treaty in International Law" published in 1996 and Ulf Linderfalk's "On the Interpretation of Treaties. The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties" published 2011, taking into account the relatively short period of time between the publication of the two books, it is quite remarkable how different views on the topic those two convey. Klabbers concludes in his research based on the writings of political scientist Charles Lipson and Professor Emeritus and former legal adviser at the U.S. Department of State, Richard B. Bilder *inter alia* that States do not want much to do with strict policies[12] whereas Linderfalk argues on the opposite direction: "For political reasons, states are decreasingly less willing to rely upon customary international law for the regulation of legal matters."[13] These two valuable books reflect exactly how varied the opinions of legal scholars and practitioners in fact are. In addition to that aspect, the two reflect differences in today's world which are affected by geopolitical factors. Of course, the same applies for historical documents reflecting State's views and opinions on the topic, but through the two aforementioned books, it was visible on how the matters are looked at today: geopolitical, and hence cultural-historical backgrounds of States affect the state of mind of actors of international law perhaps more intensely than obvious.

The latter idea is also evident looking at various documents on the reservations made to existing treaties. For example the document of the Fourteenth meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter also CEDAW) held in New York, 23 June 2006.[14] The named document gave substantial evidence of the controversial

[10] O. Corten, P. Klein (Eds.). The Vienna Convention on the law of Treaties. A Commentary. Volume 1. Oxford: Oxford University Press 2011, p. 540.
[11] G. G. Fitzmaurice, Yearbook of the International Law Commission, 1956, Documents of the eighth session including the report of the Commission to the General Assembly, Volume II, Document A/CN.4/101, United Nations: New York 1957 pp. 115-116.
[12] J. Klabbers. The Concept of Treaty in International Law. Hague: Kluwer Law International 1996, p. 27.
[13] U. Linderfalk. On the Interpretation of Treaties. The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties. New York: Springer 2011, p. 1.
[14] Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women. Fourteenth meeting. New York, 23 June 2006. Item 6 of the provisional agenda. Declarations, reservations, objections and notifications of withdrawal of reservations relating to the convention. CEDAW/SP/2006/2.

ideas and understandings of the validity of reservations due to certain reserving states societies' cultural backgrounds. The juridical outcomes of violated treaties thereafter are found questionable and the today existent, even though highly objected reservations are deemed invalid by the result of this work.

Very precise linguistically and accurately practical is the book by Chan-fa Lo, a Judicial Yuan - The Honourable Justice of the Constitutional Court of Taipei, Taiwan. In his "Treaty Interpretation Under the Vienna Convention on the Law of Treaties (hereinafter also VCLT). A New Round of Codification," published in 2017 in Singapore, most valuable proposals are expressed in a manner comprehensible to all interpreters of international law. The book expresses already in its title that it is desirable to have a second round of systematisation of the VCLT. Certain existing international practices *inter alia* exercises concerning treaty interpretation as well as certain new rules addressing emerging issues could be codified into the VCLT in order to make treaty interpretation more predictable and transparent. I could not agree more – the aim of this thesis corresponds with this, and even merges into one in terms of practices regarding reservations and general interpretational matters. I, also, believe that international law must be fortified through precise and detailed codification.

Through the chosen literature the aim for this thesis was to attain as clear overview of the topic at hand in the given dimensions as possible. Different opinions of legal scholars from around the globe have carefully been considered - various authors have been included within the selection of literature used. Well-known jurists as well as their up and coming younger colleagues' opinions have been taken into account. Ideas from the subjects history have been considered as I believe without knowing it one doesn't attain the ability to orientate in today's legal acts, provisions, treaties etc. All sciences that are able to evolve, have a past and it's of critical importance to understand why matters are attended to today as they are. Simultaneously legal philosophy is embedded into the thesis as throughout the writing process it was more and more evident that ethics are somewhat diminishing from jurisprudence, and that aspect needs attention herein.
A universal and reliable solution needs to be found, which foremost needs to be functional.

To address this problem, the thesis will be divided into four chapters. The first chapter will give a comprehensive overview of what constitutes a reservation. It discusses the legal definition thereof and effects of reservations as well as the opinions of the essence of reservations to treaties of various legal scholars — opinions vary gravely. Vivid examples of contradictory reservations will be given as examples in this chapter. With the latter objections of treaty parties will be analysed. Objections constitute an integral part to reservations - the legal effects as well as existing and possible varieties of objections will be discussed: a proposal for a novel view on the division of objections is added.

The second chapter will provide with a historical overview of the developments within the topic. It will look at how the reservations issue has developed through time, what changes have been made to the Vienna Convention on the Law of Treaties paragraph regarding and how these changes have been justified. Works of various International Law Commissions Special Rapporteurs will be highlighted.

The third chapter discusses the problems of the present day — States opt for non-binding agreements instead of international treaties. The policy of reservations seems too restrictive for many, which is why actors of international law often choose less restrictive opportunities for cooperation instead. The problem herein lies also in another contextual aspect – actors of international law seem affected by the fact that many legal scholars still ask the question whether international law really is law? The abovementioned can construe as a phenomena called “treaty fatigue” — and the future of international law is therefore at risk.

The final chapter proposes a possible solution to the problem of the validity of reservations to international treaties. As discussed and exemplified in the previous chapters, the process of making reservations has created extensive confusion amongst the actors of international law and the practice lacks a clear united vision. Numerable invalid reservations to treaties are in force today and even when objected to, the latter act doesn’t have a tangible legal effect on such reservations. A thorough look into the history and the analysis of practice regarding reservations has led to the possibility of a resolution to the issue. International law requires a united front where illegal derogations from provisions of law such as the making of controversial reservations to treaties becomes impossible. The aim and purpose of any given treaty must be the focal point in regards to such agreements.

Methods used for this master's thesis are by subject matter the historical overview of legal theory and developments in research; and analytical: going from general to detailed through the analysis of theory and from thereon looking closer at controversial practice regarding the making of reservations to international treaties. A possible solution is proposed accordingly.

Keywords: international law, public law, human rights, treaties, reservations

CHAPTER I: WHAT CONSTITUTES A RESERVATION; OBJECTIONS TO RESERVATIONS

According to Article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties 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.

To exclude or to modify the legal effect of certain provisions in other words means not to accept the treaty as posed, only on the reserving parties' own terms. Philosophy has a way of explaining complex concepts through analogues using the same actions in completely different situations. Oftentimes laws are explained by the assistance of the illustration of a simple analogous procedural engagement such as, for example a ball game. An act of jurisprudence, and a ball game, both must be assisted by certain rules and provisions to be of any success towards any given aim. Only the idea of a ball game without rules is absolutely unimaginable — various teams were to play with their own rules on their own terms, making reservations where seems comfortable. In their very essence laws and sanctions are meant to be predictable, yet international law often lacks this certain quality, hence it is often criticized for it. A continuous question that comes up with any international legal argument is the question whether the norms invoked by the parties are norms of international law or not.[15] Treaties are considered "a relatively clear and reliable source of international law", and "a good deal easier to discuss than custom".[16]

Reservations are the exclusions of certain provisions of the treaty by states which wish to be parties to the treaty, but oppressed with certain distinctions. These are, usually, unilateral statements which must follow certain rules. Reservations, by law, cannot be made if they contradict the aim of the treaty; if it is prohibited by the treaty to make a reservation or if the treaty provides only certain reservations and the reservation is not compatible with the given requirements. Yet reservations which clearly contradict to these terms are made perpetually. In traditional international law, the integrity of the treaty was of decisive importance. Unanimity principle was

[15] J. Klabbers, p. 1.
[16] *Ibid*., p. 2.

required of all States parties for a reserving party to become a member — without unanimity it was impossible to become a member to such a treaty.[17] For what reason are reservations allowed in the treaties in modern times? Is such modification of treaties the necessary consequence of the current structure of the law of treaties, even if it is an unpleasant outcome?[18] Perhaps such practise is only contributing to the failure of the protection of treaties and whatever they are meant to regulate? Should the modern world see reservations as positive phenomena or as negative ones? And in case reservations are found to be a necessary consequence of treaty law, is it possible to regulate the making of reservations in a way that would guarantee a valid outcome which does not in any way raise the question of validity? States are certainly not in the position to be obligated to say "yes" to everything. Can we eliminate the apparent need to accept such parties to treaties who violate the essence of the treaty, who make such reservations which to numerous parties are clearly contradictory and to which no matter how many States object to, the cry seems to be lost in the wind? For what reason do jurists draft such rules as the VCLT Article 19 to 23 which lay out principles to be taken into account whenever attending to the question of reservations and objections to them? Historical texts regarding VCLT exhibit the problematics Special Rapporteurs and other engaged jurists have faced with drafting the articles of the convention, and the question of reservations has been dealt with for decades. Nevertheless – the problem is evident in today's practice.

When it comes to human rights, to which numerous prominent treaties are devoted, the problem is perhaps most strongly felt due to the very fact that the human factor is integrated into them. Reservations to such treaties could indicate superficial interest that States take in the international protection of human rights.[19] The World Conference on Human Rights of 1993 held in Vienna addressed the issue of reservations to international human rights instruments and asked States to review their reservations on regular basis and seek to the possibility of withdrawing them.[20] Trying to achieve positive change in a practice that States have exercised in a certain manner for many years can be rather challenging for the international community at large and specifically and to

[17] L. Lijnzaad. Reservations to UN-Human Rights Treaties. Ratify and Ruin? Boston: Martinus Nijhoff Publishers 1995, p. 16.
[18] *Ibid*., p.4.
[19] *Ibid.*, p. 4.
[20] *Ibid.*, foreword.

human rights bodies in particular which seek to remedy human rights violations. The principal question is whether the monitoring bodies have any influence in this matter and if they do, how they could be of any impact.[21] Among international lawyers it is collectively accepted that this is a problematic aspect of the universal protection of human rights. The validity of a reservation to a treaty on human rights must be evaluated in the light of general rules of treaty law. The object and purpose of treaties must be paid close attention to in order to conclude whether the reservation is compatible with the treaty or not.[22]

Intent and consent constitute an important issue in becoming a member of a treaty. The existence of consent, nevertheless, is at times put at the pedestal once a dispute between treaty parties arises. The argument is sometimes used as it were questionable whether consent was given when becoming a treaty party. As stated in the 1986 Vienna Convention's preamble: Recognizing the consensual nature of treaties and their ever increasing importance as a source of international law and noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized.[23] The then alleged lack of consent can be misused towards the *pacta sunt servanda* rule. Consensus plays a role of great importance in any agreement. It means that the party gives permission for something to happen or an agreement to do something. For a legal agreement to be valid, parties must state their consent. It is questionable how practitioners of international law at times seem to envisage concluding a treaty or any other type of agreement without the necessary element of consent, nevertheless the phenomena can be witnessed when enquiring into certain protocols of international meetings. A State is by default represented by a person legally authorized to negotiate on the States part, to make reservations on its part, to sign and ratify the treaty. Therefore to argue in case of a dispute that the State hadn't given its consent for this or that treaty obligation seems excessive.

The question has gone thus far that the International Law Commission considered whether a separate reference to the intention to be bound should be incorporated. ILC decided not to apply such separate reference for various reasons. One of the prominent explanations was that such

[21] *Ibid.*, p. 7.
[22] O. Corten, P. Klein, p. 8.
[23] *Ibid.*, p. 12.

reference would indicate that states could always choose from various legal systems. But whether this option could always be present, is dubious.[24]
ILC decided that the element of intention is included to the phrase "governed by international law". Hence the Commission found a separate reference to be excessive.[25] Indeed, those remarks raise the question regarding the clarity and overall understandability of treaty law and in this case the factor of intent — would certain parties withhold from signing a treaty without the inclusion of that term? If not, then that is not an essential part of the text.

Yet some legal scholars question the existence of a States consent in a treaty. A few even question the necessity of the *pacta sunt servanda* norm which is a fundamental principle of law. According to such understanding, this principle applies solely when States agree that it does and there is no obligation on states to invoke *pacta sunt servanda* rule. States are free to apply the norm if they prefer, and it is only when they do that agreements can be deemed binding.[26] If this idea were to be true, what meaning would agreements have, if any at all?

Reservations are accompanied by certain important nuances, but also related inseparable elements which stand by reservations. These elements are in a way accessories to reservations. Objections, which are such accessories, are useful tools, seemingly often devalued by treaty parties. This contextual opportunity to show one's state of mind is not used often enough, and that is one of the reasons why there are innumerable illegal reservations today within various international treaties. Using the right to object to a reservation can prevent problems likely to arise in the future, and parties should be encouraged to use that right to speak their mind as soon as possible for a more forward looking process. States know the core values they carry in their foreign policy, it usually is not something they discover instantaneously. Therefore, objecting in advance would be the optimal solution to preventing illegal reservations from gaining any powers.

If a conflict regarding a parties' national policies in connection to a reservation to a given treaty occurs later in time when the treaty has already acquired its full powers along with its reservations,

[24] J. Klabbers, p. 57.
[25] *Ibid*., p. 57.
[26] *Ibid*., p. 40.

there are a few options a State can choose from to remedy its position. These possibilities, nonetheless, have no immediate legal effects as opposed to objections made in timely manner. Some reactions resemble objections, but of course, the effects of them are not the same. Late objections can be formulated after the end of the time period set out in draft guideline 2.6.13.[27] As they are vocalized outside of the given timeframe for this procedure, they do not carry a legal effect. It is merely a way to let the reserving party know that one does not fully agree with its reservation, whereas the reservation has its full legal effects.

Conditional objections can be made to potential or future reservations. This type of objections can be made in advance to prevent a party of ever making a reservation in contradiction with their acceptances regarding the treaty. That is an effective way to deal with states or international organizations known for their malicious behaviour, unfortunately not used often enough as patterns of a States politics can be observed over time, and often therefore also predicted. Such an objection carries the weight of a legal threat, similarly to the objections made by non-members. Conditional objections do not carry an immediate legal effect, but nevertheless an important statement is made this option is applied.

The reason why States don't always use their right to object might also lie in the notorious power-driven practices of States, for instance when a weaker state is fearful of losing a State in the position of power as its ally. It can be observed that neighbouring States, in efficient relations regarding military defence, economical help and trade, do not feel comfortable objecting to reservations made by the government of the State in preferred position, which of course is comprehensible but in terms of legality not correct. An objection must be made when witnessed invalid. States' relationships should not be based on fear and threat, whether it be silent or not. A State or an international organization which considers that any given reservation is invalid, should formulate an objection as soon as possible and explain the reasons of it.[28]

[27] A. Pellet, p. 7.
[28] *Ibid*., p. 8.

The powers of objecting to a reservation can be divided into essentially different meaningful categories and sub-categories accordingly. What I have ascertained is that objections can be divided by their inherent intentional characteristics of the reservation as a compliment to the already known division provided by legal scholars, which will briefly be discussed later in this chapter. The finding described below could be of assistance in defining different types of objections to reservations. The division could be beneficial to the interpreters of a certain reservation made by a treaty party, or to a treaty party wishing to formulate a reservation to an international treaty.

Thus, by inherent intentional characteristics of the reservation I would divide objections as follows.

1) An objection to a reservation in contradiction with the aim and purpose of the treaty. This is an objection to an attempt to reserve within a treaty in an illicit manner or an objection to such an existing reservation which is already in force. The aim of the objection of an attempted reservation is to announce the reservation, not yet legally in force, null and void so that it would never come to the stage of having a legal effect. Secondly, the aim to object to an illegal existent reservation is to denounce it by declaring it null and void. In practice, this type of an objection constitutes the majority of objections by States. An objection to an invalid reservation does not, in itself, produce any of the legal effects envisaged in the Vienna Convention, which deals solely with reservations that meet the criteria for permissibility and validity established therein. Under the Convention, in such situations, acceptances and objections have a very specific function: determining the opposability of the reservation. Acceptances and objections are very important in determining the validity of a reservation.[29]

2) An objection to a legally valid reservation. States can use their right to object to any reservation, whether it is in contradiction with the treaty itself or not. In case a State or an international organization cannot accept another parties reservation, it may still object to it without the fear that the objection in that case is refrained from any legal consequences whatsoever. Such an objection can nevertheless affect treaty parties actions regarding the object of the reservation, and enquires certain time-related elements of a late objection. The results of any given dialogues in that matter depend on parties attitude towards cooperation. The objection might affect other treaty parties views on the given reservation who might agree or disagree with it, and it certainly articulates the objecting parties stand on the given matter which should definitely be considered as important

[29] *Ibid.*, p. 8.

information. An objection to a valid reservation is not covered in the Vienna regime in the manner which accredits no tangible legal effects to it. Nevertheless, it has an important role in implementation the rules as well as in assessment of the validity of a reservation. Therefore it is part of the reservation dialogue, which at this time expresses itself mostly via accepting of reservations and objecting to them. The Vienna Conventions are silent on the named subject but the fact does not mean that States should not make such objections. They are, in fact, relevant.[30]

Communication is of great importance for successful relationships between States, and to avoid as many misunderstandings in any future situations as possible, it should be considered most important to express one's views even if the reservation that's being objected isn't inherently illegal. The consequences of objections and acceptances, even though to a lesser extent, are not limited to the legal effects provided by the Vienna Conventions. They do not necessarily compose the end of the process — instead, a beginning of a successful cooperation could rise from such dialogue.[31] To ensure best possible results, a reasoning for an objection is expected.[32] Effective and timely communication opportunities should be used to the maximum.

A wholesome example of practice in this regard is provided by Finland when making an objection to the reservation formulated by Malaysia as acceding to the 1989 Convention on the Rights of the Child by pointing out that "the reservation /…/ is subject to the general principle of the observance of the treaties according to which a party may not invoke its internal law, much less its national policies, as justification for its failure to perform its treaty obligations /…/." Herein the government of Finland found the reservation incompatible with the object and purpose of the convention and therefore inadmissible under article 51, paragraph 2, of the Convention. Finland further noted taking a firm position on the matter that the reservation made by the Government of Malaysia lacks legal effect.[33] As a following act, Malaysia partially withdrew its reservation. This could be witnessed a successful practice of objecting to a reservation deemed invalid taking into account that A. Pellet in his Seventeenth report on the matter deemed it sufficient if a reserving party partly

[30] *Ibid*., p. 30.
[31] *Ibid.*, pp. 4-5.
[32] *Ibid*., p. 30.
[33] *Ibid*., p. 5.

withdraws its reservation. As long as the partly withdrawing eliminates the contradiction to the aim and purpose of the treaty, it is indeed successful.

It is therefore proven that a dialogue between the parties is necessary and can indeed be productive. As an opposite, it is of course time consuming and could result in a futile treaty if treaty parties refrain from observing the acts of other parties and the outcomes. The flexibility that is provided for reservations regime today makes this dialogue extensively important as due to the result of this flexibility we can observe treaties braking down to multitude of various treaty relationships.[34]
Jan Klabbers has in his "Accepting the Unacceptable? A New Nordic Approach to Reservations to Multilateral Treaties" stated the importance of division of objections by their effect to the reservation. *Inter alia*, a super-maximum effect which is also described as a "no-benefit approach" would eliminate the effect intended by the reserving State. By the principle applied to a super-maximum effect of an objection, the treaty shall enter into force for the reserving state whereas no benefits would derive from its reservation. In other words, the super maximum effect eliminates the reservation.[35] There are no divisions of objections provided by the Vienna regime. Any objection to a reservation does not preclude the entry into force of the treaty even as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State, as provided in VCLT Article 20 4. (b), hence a State wishing to proclaim more out of an objection than a mere expression of ones state of mind or opinion towards the reservation, the objecting State must exercise preventive attention when doing so.

Even though somewhat clear rules are laid down on the procedure and admissibility of reservations to treaties, the rules are not very detailed. Certain infamous reservations are still in force today to some international treaties regulating rather delicate matters regarding, *inter alia*, fundamental human rights. As stated before, making reservations which are in contradiction with the aim and purpose of a given treaty is considered a violation of law. Is then, the acceptance of invalid reservations to treaties by other parties also a violation? — that constitutes a separate question. Analogously, in Estonian constitutional law provisions it could be argued to be a violation of the law, as well as the act to which the other party consequently failed to object to. The fact that the

[34] *Ibid*., p. 3.
[35] J. Klabbers (Co-edit.). Accepting the Unacceptable? A New Nordic Approach to Reservations to Multilateral Treaties. Nordic Journal of International Law 2000/69, pp. 179-193.

party or parties knew or should have known that the reservation violates the law could be sufficient to find them culpable of, by acting or staying inactive, assisting to the violation of law by the wrongly reserving treaty party. The Estonian law of Obligations Act, passed on 26 August 2001 § 15 regulates the Party's awareness of deficiencies of contract. It clearly and broadly explains that in case a party has assumed the obligation to engage in preparations for the contract or to inform the other party of circumstances relating to the preparations for the contract and the contract is void due to failure to adhere to a formality, the other party shall be compensated for the damage created due to the fact that the other party believed the contract to be valid. And if, upon entry into a contract, one party is or should be aware of circumstances which do not constitute a violation of formalities but render the contract void or if such circumstances are caused by the party, sanctions shall be applied. Making the matter even stricter, the paragraph 15 of the aforementioned Estonian legal act further states that if a person was unaware of circumstances with legal effect due to gross negligence, it still does not constitute as a valid excuse: it is deemed that the person should have been aware of the circumstances. Clear norms as the abovementioned one would be welcomed within international law, as well. Every detail and nuance of the issue is laid down, and practice shows that even then innumerable disputes arise by day. For this reason, the example should be considered as an excellent example but simultaneously the bare minimum of requirements for a legal act of international law which is clearly more complex than any State's law system. But the goal is always the of the same category – to regulate juridical and private persons' interactions and protect both parties from evitable harm regarding any acts by any parties concerning the contract. Another important nuance of the regulations is the protection from harm coming from outside the contract – from any possible third persons.

For some actors, it seems, it sincerely is a question of different perceptions due to numerous factors such as, among others, the abovementioned cultural – historical backgrounds of States which in itself includes a vast area of sub-topics such as the influence of religion or the next to absence of it, linguistic issues – the age of the language itself, what is more, the extent, precision and relevance regarding time of the State's *lex scripta inter alia*, the prominent political vision or prevailing but competing visions of the society, the placement of women and men in society and so forth. The fact stated in itself undermines the accountability of international law at large and subsequently it undermines all its sources, including treaties. The issue is that if international law is affected by

such factors, clear universal norms are difficult to be agreed upon. If the seriousness of any entity or phenomena is of dubious value, the results expected from it are consequently probably of questionable value, too. As a result, acts committed under international law are sometimes regrettably of dubious value.

States have not come to a universal consensus in this question yet this is what is expected of them by the global community. Diplomats and politicians represent their States, their people. Agreeing on terms of treaties is a problematic area of international law, yet it represents one of the most fundamental and most valuable traits for international cooperation. The reservations regime instituted by the Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations does not impose static solutions on contracting States or contracting organizations. It provides plenty of leeway for dialogue among the parties. The possibility of this "reservations dialogue" is confirmed by the *travaux préparatoires* of the 1969 Vienna Convention and is reflected in the treaty practice of States. Even though monitoring bodies created by the treaties are involved in the process, the key players here are the author of the reservation and the other contracting States or contracting organizations.[36]

Some of the reservations made to international treaties contradict the aim and purpose of them so clearly that it is questionable as to why certain parties actually are involved in the treaty in the first place. For example, the existing reservations, which contradict the aim and purpose of the Convention of the Elimination of All Forms of Discrimination Against Women could without a doubt be considered invalid, therefore subject to withdrawal. More concretely, only to mention a few contradictions therein, article 7 of the convention provides with an undoubted example. The named article states that parties to the convention shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and be eligible for election to all publicly elected bodies; to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

[36] A. Pellet, p. 4.

Even though, for example, Kuwait and Israel are parties to the treaty, the two named States object to these terms. To emphasize the issue, a simple question shall be asked – how would one explain that this treatment of women is not discriminatory? The given example doesn't pass the test of reason. Amnesty International, *inter alia,* is concerned that many of the reservations entered by countries are contrary to the purpose of the Convention. It is found that certain reservations to the Convention are so extensive that they are difficult to review and to challenge.[37] One might argue that this type of reservations are allowed due to cultural differences of societies wishing to be part of the Convention. Even if so, is this a legally valid argument? It is definitely arguable, also deeply controversial taking into account the universality principle and the judgment of the non-contradiction of the aim and purpose requirement.

The Vienna Convention on the Law of Treaties states, *inter alia,* that State parties to the convention having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of universal respect for, and observance of, human rights and fundamental freedoms for all, agree to the provisions of the convention. The rightly called "treaty of treaties" regulates all aspects on how international treaties should be concluded, interpreted, and questions regarding reservations and objections including – these rules are crucial and of decisive character. VCLT is one of the most important instruments in treaty law and remains an authoritative guide in disputes over treaty interpretation, hence it is critical that the flexible rules provided by the treaty are valued not only in theory but also in practise.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in its resolution 34/180 of 18 December 1979. It entered into force on 3 September 1981, in accordance with the provisions of its article 27. As of 1 April 2006, 182 States had ratified or acceded to the Convention. Since the last report (CEDAW/SP/2004/2) the following five States have become party to the Convention: Marshall Islands on 2 March 2006; Micronesia

[37] Weakening protection of women from violence in the Mideast and North Africa region/Reservations to CEDAW – Al report/Non-UN Document 2004, https://www.un.org/unispal/document/auto-insert-205832/ (24.02.2021)

(Federated States of) on 1 September 2004; Monaco on 18 March 2005; Oman on 7 February 2006 and United Arab Emirates (hereinafter also UAE) on 6 October 2004.[38]

The fact that 45% of reservations to the Convention were objected to should be taken as sufficient verification of the gravity of the problem.[39] Article 28, paragraph 2, of CEDAW adopts the impermissibility principle contained in the VCLT. It states that a reservation incompatible with the object and purpose of the present Convention shall not be permitted. Although CEDAW does not prohibit the entering of reservations, those which challenge the central principles of the Convention and contradict the provisions of also general international law. As such they may be challenged by other States parties.[40]

Some of the more vivid and extensive examples regarding the questionability of the validity of reservations to CEDAW are provided by the reservations made by the United Arab Emirates (hereinafter also UAE). The reservations which UAE have made to CEDAW on 6 October 2004, the same date that they acceded the treaty include an extensive list. Article 2 (f), 9, 15, paragraph 2, 16 and 29, paragraph 1, of the Convention are found incompatible with UAE's national legislation.[41] Taking a close look at the articles and reservations to them, it can be firmly stated that the reservations are not compatible with the object and purpose of the treaty. *Inter alia*, they all contradict the principle of good faith, but violations go beyond that. Article 2 (f) of the mentioned convention states that Treaty Parties condemn discrimination against women in all its forms. They also agree to pursue by all appropriate means – and importantly - without delay a policy of eliminating discrimination against women and, to this end, to undertake all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. The aspect of time in this article is of great importance, regarding the fact that often, even if invalid reservations are withdrawn by the reserving party, such a right — as it is not an obligation at this time — is practised only much later. But the maltreatment then is already practised. The reservation to Article 2 (f) accordingly reads

[38] United Nations. Document CEDAW/SP/2006/2, Reservations to CEDAW. https://www.un.org/womenwatch/daw/cedaw/reservations.htm, p. 5. (30.05.2020).
[39] M. Girsshovich. Classifications of Objectons Based on the Legal Assessment of a Reservation by Objecting States — International Community Law Review 2014/16, p. 346.
[40] UN Entity for gender Equality and the Empowerment of Women, Reservations to CEDAW https://www.un.org/womenwatch/daw/cedaw/reservations.htm (16.01.2021)
[41] CEDAW/SP/2006/2, pp. 30-31.

as follows: "The United Arab Emirates, being of the opinion that this paragraph violates the rules of inheritance established in accordance with the precepts of the sharia, makes a reservation thereto and does not consider itself bound by the provisions thereof."[42]

The violations of law in this matter are rather complex. Article 2 is a fundamental article of CEDAW describing what the object and purpose of the treaty is – prohibition of discrimination against women in all forms. The named treaty party has nevertheless made a reservation to it, and a comprehensive one – it considers itself not bound by the provisions. The controversy in this practise is clear, yet the reservation exists and the reserving party remains a party to the treaty. What is the reason for this? It is possible to withdraw from a treaty which a State find unsuitable, and it is possible to object to such a reservation. Provisions of domestic law cannot mean the nullity of a basic provision derived from a source of international law. Therefore, sharia's contradicting provisions cannot be considered as a valid reason.

The next provision, Article 9 that the abovementioned treaty party made a reservation to states that parties to the convention shall grant women equal rights with men to acquire, change or retain their nationality. It further explains that the parties must ensure that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife. The latter could leave her stateless. According to the article, all states bound by this instrument must grant women equal rights with men with respect to the nationality of their children. The article clearly demands that parties to CEDAW grant women equal rights regarding nationality in various situations where men are granted this right.

Nevertheless, UAE made a reservation to the provision and explained as follows: "The United Arab Emirates, considering the acquisition of nationality an internal matter which is governed, and the conditions and controls of which are established, by national legislation makes a reservation to this article and does not consider itself bound by the provision thereof."[43]

Article 9 is not a basic provision, it is a specific one, but nevertheless the reservation clearly contradicts the aim and purpose of the treaty – it discriminates women. The "internal matter"

[42] *Ibid*.
[43] CEDAW/SP/2006/2, pp. 30-31.

explanation by the reserving party cannot be considered valid for various other reasons. Discrimination due to sex is prohibited by the Universal Declaration of Human Rights Article 2 which reads that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, inter alia sex; and 7, which reads that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. In addition, the reservation violates Article 27 of the Vienna Convention of the Law of the Treaties, to which the United Arab Emirates is not a party, but as stated earlier, it is considered the primary tool for guidance regarding treaties. The latter states that a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty.

Moving forward, Article 15 of CEDAW lays down rules regarding civil matters. It firmly states that parties must accord to women a legal capacity identical to that of men and the same opportunities therein. Parties shall give women equal rights to conclude contracts. They must enable women to administer property and shall treat them equally in all stages of procedure in courts and tribunals. The provision entails the core aim and purpose of CEDAW. Nevertheless, UAE made a reservation to it which holds women from these rights. The United Arab Emirates found again that this paragraph too, is in conflict with sharia regarding legal capacity, *inter alia* the right to conclude contracts. Therefore UAE does not consider itself bound by the provisions thereof, but de facto enters the treaty, and moreover – remains a treaty party until today.

United Arab Emirates further makes a reservation to Article 16 of the treaty. Article 16, CEDAW which explains that States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. It further lays down requirements which the parties must ensure - the same right to enter into marriage; the same right freely to choose a spouse and to enter into marriage only with their free and full consent; the same rights and responsibilities during marriage and at its dissolution; the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions

where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. The article further explains that the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. Nevertheless, the United Arab Emirates found it appropriate that the State will abide by the provisions of the article insofar as they are not in conflict with the principles of the sharia. But sharia makes a woman's right to divorce conditional on a judicial decision.

It is highly questionable why the United Arab Emirates is a party to CEDAW taking into account the object and purpose of the treaty, and the clear prohibition of making reservations that go against these matters. The reserving party clearly does not abide by the rules of VCLT, from which CEDAW's basic provision prohibiting such reservations is derived. The sentence in the reservation stating "the payment of a dowry and support after divorce is an obligation of the husband, and the husband has the right to divorce" unquestionably indicates that the state of mind of the reserving party towards marriage is similar to a sales contract, whereas the husband is the buyer and the wife is the merchandise which after "use" gets a monetary compensation, if the husband has the finances. The 'merchandise' cannot withdraw from the contract when she so wishes. A woman, in this respect, is not even considered a human being.

When making those reservations, for the least the United Arab Emirates explained the reason for making such reservations in comparison to many others who clearly made a lesser number of reservations to this treaty, but did not explain the reason whatsoever. For example Brazil, which only made one reservation, also made by United Arab Emirates but in this context not considered invalid, concerning the concerning 'automatic' settlement of disputes in the International Court of Justice. This is also the most common reservation amongst the parties. The reservation made by Brazil reads as follows: "Brazil does not consider itself bound by article 29, paragraph 1, of the Convention."[44]

[44] CEDAW/SP/2006/2, p.10.

United Arab Emirates has for the most part made reservations to all the core provisions of the treaty which reflect the aim and purpose of it, yet - it is a party to it. If this is not violation of international law, then it's difficult to envision what is. Conclusively to the analysis above, these reservations can be deemed legally invalid. Certain State's parties found the situation grave of a threat to the treaty enough to object to these reservations. During the period of the entering into the agreement, objections to reservations by the United Arab Emirates were made by the following States parties: Austria, Denmark, Finland, France, Germany, Greece, Latvia, Netherlands, Norway, Poland, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.[45] The Committee of the United Nations Entity for Gender Equality and the Empowerment of Women considers that those States parties which have entered reservations to the Convention have certain options open to them. According to ILC a State party may after having examined the finding in good faith, maintain its reservation; withdraw its reservation; "regularize" its situation by replacing its impermissible reservation with a permissible reservation; renounce being a party to the Treaty. Such measures have been ignored by the UAE. To date, few reservations to article 2 have been withdrawn or modified by any State party. Reservations to article 16 are rarely withdrawn.[46] The *bona fide* requirement should be considered as a fundamental element in treaty interpretation process.[47] Weather a reservation to an international treaty is made in good faith or not can be estimated, as Chang-fa Lo has proposed, according to the evaluation of fairness and unfairness regarding the result of a reservation to a treaty. Honesty and malice should be considered as to whether there is any objective fact to reflect that an interpreter has been acting in a corrupt manner. Even if honesty is an extremely difficult feature to evaluate, Lo- s proposal is useable. In addition to the mentioned, characteristics such as reasonableness and consistency should be evaluated whenever interpreting an aspect of a legal matter. To evaluate whether an obvious inconsistency from previous interpretations is a result of practise without a valid reason is quite easily trackable. To see whether the interpreted term or object and purpose of the treaty is disregarded is similarly calculable,[48] and should stand in the way of respectable practise of law.

[45] *Ibid.*
[46] Reservations to CEDAW. UN Women. https://www.un.org/womenwatch/daw/cedaw/reservations.htm (15.02.2021).
[47] Chang-fa Lo, p. 293.
[48] *Ibid*., p. 294.

Even if the objection is described as a unilateral statement in the Vienna regime, nothing prevents States or international organizations from making their objections collectively in order to give them stronger influence. The practise in this area is marginal,[49] but for instance a good example of such practice was provided by the collective objection made by Czech Republic, Estonia, France, Hungary, Ireland, Italy, Lithuania, Slovakia, Spain and the United Kingdom in respect of the reservation formulated by Yemen when acceding to the 1999 International Convention for the Suppression of the Financing of terrorism.[50]

With regard to the reservation made by Yemen with respect to article 2 (1) (b) upon accession the Government of the Republic of Estonia had examined the reservation made on 3 March 2010 by the Government of Yemen and wishes to recall that by acceding to the Convention, a State commits itself to suppress the financing of all terrorist acts and that the made reservation significances to exclude the suppression of the financing of acts of terrorism 'intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict' and thus is contrary to the object and purpose of the Convention. Estonia then indicated the rules of international law derived from the VCLT regarding the object and purpose of a treaty and expressed its objection to the reservation. Nevertheless, the objection further explained that the Convention is in force between the parties despite this objection.[51] All the above mentioned member states objected separately, but in the same expression and therefore the impact was of maximum possible effect allowed by international law.

Cooperation between States and International Organizations is exceedingly important with regards to treaty law. The results deriving from either successful or failed cooperation results in corresponsive results: successful cooperation or failed cooperation; or in the existence of an already concluded treaty - a successful treaty or, to a certain extent or as a whole, a failed treaty. Concurrently from a slightly distinctive, but integral angle, this is what treaty law is designed to regulate. The acts made by actors of international law create and shape the law, either through concluding treaties; or acting according, or to the contrary – not according to treaties providing

[49] A. Pellet, p. 14.
[50] United Nations Treaty Collection, International Convention for the Suppression of the Financing of Terrorism, Multilateral Treaties Deposited with the Secretary-General, http://treaties.un.org (chap. XVIII, 11), New York 1999 (04.03.2021).
[51] *Ibid*.

States with norms of international law. What is more, simultaneously customary international law is not disappearing from the picture while creating new norms of its own which at one time or another might end up becoming a treaty or a provision of a treaty - hence becoming *lex scripta*, too The latter surely has certain benefits over customary international law – simpler verifiability, *inter alia.*

CHARPTER II: HISTORICAL OVERVIEW OF THE DEVELOPMENTS WITHIN THE RESERVATIONS REGIME

An introductory note to the second chapter is presented herein by the German jurist and political theorist Carl Schmitt who has argued that the problem of reservations arises from the fact that, since the end of the 19th century, international law has become a formally universal system having developed and changed from the European order *(jus publicum Europaeum).* As the latter involves many more States, bringing with it cultural integrations but also contradictions and clashing of cultures thereof, the new entity – international law – involves in it a novel characteristic: normality of reservations to treaties. Schmitt further claims that as the first Hague Peace Conference in 1899, reservations were an exception, and at the second in 1907, where several non-European States participated, reservations had already become a normality. "Reservations turned the most beautiful arrangements into mere facades".[52] He further argued that the *"pacta sunt servanda"* rule waved as a legal flag over a completely nihilistic inflation of innumerable, contradicting and completely emptied pacts due to open or silent reservations.[53] Perhaps what Schmitt meant by "silent" reservations is that States which obtain the ability to object to an invalid reservation cease of using that right which in a way can be seen as an obligation.[54]

The more extensive dialogue of the legal effects of reservations to international treaties achieved the opportunity to be properly discussed in international forums after the year of 1956 when Special Rapporteur Gerald Gray Fitzmaurice proposed a separate provision for this matter. In his report on the Law of Treaties for the International Law Commission, he headed the regarding article in accordance with the previous procedure, which required unanimity between member states for admissibility: "Article 40. Reservations (legal effects *if admitted* – emphasis added)"[55] Even though the provisions within the VCLT Article 21 and the one proposed by Fitzmaurice are essentially similar, the two articles embody certain important differences which have formed the history of making of reservations to international treaties thereafter. The first distinction to be

[52] C. Schmitt. Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum, 5te Auflage, Berlin: Duncker & Humblot 2011, p. 212. ''Die Vorbehalte verwandelten die schönsten Vereinbarungen in eine blosse Fassade.''
[53] *Ibid*., p. 212. ''Der Satz "pacta sunt servanda" wehte als juristische Flagge über einer völlig nihilistischen Inflation zahlloser, sich widersprechender und durch offene oder stille Vorbehalte gänzlich entleerter Pakte.''
[54] A. Pellet, p. 8.
[55] G. G. Fitzmaurice, pp. 115-116.

noticed is the fact that Fitzmaurice proposed a completely separate article for the admissibility of reservations, whereas in the VCLT of 1969 the admissibility of reservations and objections are bound as one article: "Article 21. Legal effects of reservations and of objections to reservations". Therefore, in VCLT today, reservations are not addressed separately and minimal emphasis is laid upon objections, which are seen as a supplement to reservations, being bound to one article. The fact that the two, reservations and objections, are dealt with in one article takes away certain possible weight from them both, as they now are looked at rather superficially.

Secondly – Fitzmaurice's proposal raises the question of admissibility whereas the VCLT of 1969 does not. Furthermore, Fitzmaurice' s Article 37 Reservations (fundamental rule) in its paragraph 2 adds that reservations must be assented to expressly or tacitly by all States' parties. Further, he emphasizes in paragraph 3, that "in those cases where the treaty itself permits certain specific reservations, or a class of reservations, to be made, there is a presumption that any other reservations are excluded and cannot be accepted."[56] In his wording, Fitzmaurice is strict, oriented to detail and precision, which without doubt, made his proposals hefty in length but also in content, which is important. When reading his proposal to the ILC, it can be sensed that for him it was conceivably unquestionable that such a detailed and strict guide is necessary for States, leaving no room for excess and egoistic interpretations. Even though, for example, in Article 39 Reservation to multilateral treaties, paragraph 1 (b) he proposes: In the case of general multilateral treaties, a state may, subject to paragraphs 3 and 4 of article 37 above, make a reservation, when signing, ratifying, accepting or acceding to it provided there is nothing to the contrary in the treaty /…/,[57] it seems that over time a certain amount of factors indicate a decline of development through the practice of legal writing which stipulates that law provisions should be written as briefly as possible — sometimes resulting in extreme minimalism. Practice regarding disputes over interpretation of treaties provides the necessary proof that States need further guidance in practicing the Law of Treaties. One extensive fundamental document could perhaps lead to further comprehensibility in the matter and perhaps looking back on historical texts, here too, could be of great benefit.

[56] *Ibid*., p. 115.
[57] *Ibid*.

Fitzmaurice's Article 15 Drawing up of the text in general is self-explanatory, but in paragraph 2 he further adds that "Agreement on any text or part thereof must be unanimous unless, before or at the start of the negotiation, meeting or conference, a decision has been taken, by common consent of the participants, for the adoption of texts by a majority vote,"[58] sustaining the unanimity principle and clearly stating that any derogation shall be an exception bound to be agreed upon separately. The practice of unanimity is mentioned once more in Article 38 which in addition to that distinguishes between different types of treaties: general multilateral treaties, bilateral treaties, merely plurilateral treaties made between a restricted number of states having some common interest or object.[59] Today, such distinction is considered excessive even though it is self-evident that for example the geographical positioning of member states can add certain mutual understanding on certain matters due to 1) the obvious need for good neighbourly relations, and 2) often also the similarities in cultural-historical backgrounds between neighbouring States. Not only the brevity of length of a legal text should be analysed when considering an improvement to a legal act. Fitzmaurice well-articulated that every word in the treaty should be the result of careful consideration, and constitutes the *ne plus ultra* of the agreement that can be reached. The element of contract is so strong, that allowing reservations would oppose to the whole spirit of the negotiation. The importance of the basis and balance of the treaty shall not be marginalised,[60] while refraining from completely excluding the possibility of necessary and justified reservations.
Whereas Fitzmaurice similarly to his predecessors and accessors Special Rapporteurs of the International Law Commission on the topic of the law of treaties, Mr. James L. Brierly, Sir Hersch Lauterpacht and Sir Humphrey Waldock emphasized the evident need for caution and the importance of unanimity regarding the making of reservations to treaties, a turning point came in 1962 when the Commission gave up the rule of unanimity it had advocated so far.[61]

James L. Brierly as the first Special Rapporteur on the law of treaties did not devote a specific draft Article to the question of the effects of a reservation. It was nevertheless implied in paragraph 1 of the draft Article 10 what a reservation essentially means and that a reservation is limiting or

[58] *Ibid*., p. 110.
[59] *Ibid*., p. 127.
[60] *Ibid*.
[61] A. Pellet. First report on the law and practice relating to reservations to treaties, Document A/CN.4./470 1995/II (1), p. 127.

varying the effect of the treaty in so far as concerns the relations of the author of the reservation with one or more /…/ parties to the treaty.[62]

Special rapporteur Alain Pellet, who has thoroughly researched and reported on the topic in more recent years, states that full or partial withdrawal of a reservation that is considered invalid is unquestionably the primary purpose of the reservations dialogue.[63] The latter approach could be considered as one that falls under soft law, and therefore could be found unacceptable to be applied in such a delicate matter as reservations to treaties is. Reservations modify the treaty regarding certain aspects between two or more parties, but in essence it should not necessarily mean substantial changes to the treaty as a whole. However, the problem lies with the reservations which contradict the purpose and aim of a given treaty. *Pacta sunt servanda*, according to conventional understanding and theory of law, is absolute. The latter is true unless the *clausula rebus sic stantibus* is applicable, which nevertheless only applies when fundamental changes of circumstances appear. Therefore the aforementioned notion that full or partial withdrawal of an invalid reservation is not an outcome that should be considered sufficient, unless the partial withdrawal eliminates the contradiction between the reservation and the aim and purpose of the treaty. Law is to be binding to all its actors without unnecessary concessions. As Prosper Weil clearly expressed - without norms of respectable quality international law can become a defective tool.[64]

The described trend that can be observed regarding various aspects of international law in recent decades is even broader than the effects it gives to the question of the validity of reservations to international treaties and it is called 'dilution' of international law through soft law. This master's thesis disputes the use of such practice. Indubitably, the issue of the legal effects of reservations requires the same dialogue and solutions under the traditional unanimity system and the revolutionary "flexible" regime of the Vienna Convention.[65]

[62] O. Corten, P. Klein, p. 539.
[63] A. Pellet, A/CN.4/647, p. 17.
[64] P. Weil. Towards relative normativity in International law?— The American journal of International Law 1983, p. 413.
[65] O. Corten, P. Klein, p. 539.

In the Vienna regime, the dialogue between the reserving State and affected actors of international law is conducted primarily through the two reactions to reservations envisaged in the Vienna Conventions: acceptance and objection, whereas acceptance is usually silent. In this regard, the Vienna regime is distinctive from the traditional regime in which unanimity was a prominent element. In the traditional regime, an objection ended such dialogue.[66] Reviving the unanimity principle could probably solve the problem of contradicting reservations to treaties, but simultaneously, the practice could cause unnecessary legal and political tensions between States leaving the sphere of international law with displeased and unsatisfied members. It is of no doubt that the now existing system causes such tensions between States as well, but as the dialogue does not oftentimes take place at all, it is often a silent type of a tension, which could erupt in any given demanding time.

The question herein is, which system would work more advantageously towards 1) the validity of reservations to international treaties as a separate matter within the system of international treaty law; and 2) taking into account the overall view – the whole system which, after all, regulates international relations to which world peace as the goal of United Nations (hereinafter also UN) is dependent on. The unanimity system would probably be comparable to the UN Security Council and the G5-s veto power, which evidently brings unnecessarily abrupt results. But taking a view from the other angle of the issue, at this time the system seems to be excessively flexible. It is more accurately described as disorder: a rather small number of States use their opportunity and obligation to object to what in their opinion constitute invalid reservations, while others stay completely silent on the matter. It is of rare occasion when a contradictive reservation is partially, or what is more — fully withdrawn.

Frequent reservations, as well as numerous reservations by States clearly interrupt and delay the development of international law by preventing the growth of a consistent application of law. On the other hand, Brierly argues, Red Cross Convention of 1949 should be of outstandingly good example, as some 60 States had at the time of the report already ratified it. The understanding to derive from this idea is that if treaties are to be effective, they should be as widely in force as

[66] A. Pellet, p. 4.

possible — it would be desirable to attain as many ratifications as possible.[67] The latter idea unquestionably indicates the trivial importance of quantity over quality, which showed the way to the rising expansion of certain aspects of soft law, and to the today's flexible practice regarding the making of reservations to treaties. The mentality of the ILC in this aspect changed almost overnight.

Arriving in this day, vague language can be noticed on innumerable occasions in, *inter alia*, Alain Pellet' s reports on reservations to treaties. The reservations dialogue is designed to ''encourage'' States to formulate only permissible reservations and to "reconsider" and withdraw reservations that are impermissible — even objections should be withdrawn.[68] States, international organizations and monitoring bodies "may express" their concerns about a reservation[69]; the ILC calls upon States and international organizations wishing to formulate reservations "to ensure that they are not incompatible with the object and purpose of the treaty" to which they relate are only to name a few of such examples. However preposterous, these suggestions are unfortunately necessary and up-to-date. Nevertheless, they hint to nothing of novel value constituting mere recommendations to actors of international law indicating that they should act in accordance with law.

Legal theory and practice should not constitute segregated entities, where the "mind thinks" and articulates one thing but the "body does" something else, if not the complete opposite. Theory and practice should work in harmony, supporting one another. Law is a tool for organizing the society, not to abuse power by skilfully bending laws and regulations. The fact that we can in this day and age ask whether certain reservations to treaties are legally valid or not derives from the essential question of ethics. *Bona fide* and *mala fide* are inseparable components of the theory of law. The principles bear a certain important meaning, they oppose each other in essence and the latter should not be normalized in legal practice. The good faith rule is universally recognized and it is repeatedly used throughout the Vienna Convention on the Law of Treaties.

[67] J. L. Brierly. Yearbook of the International Law Commission 1951/II, Documents of the third session including the report of the Commission to the General Assembly, Document A/CN.4./41, New York 1957, p. 4.
[68] A. Pellet, p. 29.
[69] *Ibid*., p. 33.

Vienna Convention Articles 31-33 providing with the interpretational requirements many of the prominent controversies illustrated by the 20th century international law literature should be eliminated. The norms are not merely guidelines, as sometimes advocated.[70] Yet, the rules are not, of course, always followed. No law is always followed. But the least a law should be – it ought to be unanimously comprehensible and interpretable; in addition, rules should be binding in theory as well as in practice. The matter could be left unarticulated if the system would work impeccably, and if there would exist no persons, private or juridical, who would at times act in bad faith. Of course, this is utopia. Nevertheless, international law must be clarified, fortified and well codified.

Tacit attitudes which lead to violating the law should and could be subject to punishment. Preventative methods, such as the establishment of sanctions, are of higher value in effectiveness than softly encouraging States in formulating permissible reservations thus following the law in remindful literature such as the ILC reports lacking the power of legal bindingness - which could in fact result in law enforcement. By analogy, States could conformably hope that individuals behave according to the law in domestic legal matters. States may as well suggest lawful behaviours and trust their citizens to the fullest in doing so, but still, even when setting strict rules, the society is not free from the existence of individuals who at times commit unlawful acts. Veritably, it is much easier to act in a society where there are clear rules in place — such a situation eliminates excessive interpretations of societally acceptable behaviour. The idea is a fragment of the meaning of rule of law. While particularly common in economic matters, these "precarious" norms are similarly encountered in the political field, as witness, apart from the above-quoted Moscow Treaty provision, an Advisory Opinion of the International Court of Justice including obligations "to co-operate in good faith" and "to consult together" among the "legal principles and rules" governing the relations between an international organization and a host country.[71]

Another aspect of the historical background derives from the effects which are provided to the question of reservations to treaties by a Member State's cultural-historical background. How large of a part of this issue has to do with the thirst of power and the will to use the mere possibility of legal interpretation to one's own benefit with a malicious intent? Is it possible that the roots of the

[70] U. Linderfalk, p. 3.
[71] P. Weil, p. 414.

notorious practices lie simply in the cultural-historical backgrounds of States, meaning that the States *de facto* understand certain norms differently, simply due to different preferences and values? Is there a pragmatic and reachable solution to this problem? After all – international law is meant to be universal. Without treaty parties finding a consensus in these critical questions, it is impossible to predict and speculate a wished result as to the aim of a certain treaty.

Many fundamental international treaties are directed to regulate human rights, which in this aspect are unprotected, unguaranteed, irregular in practice and unfortunately influenced negatively by factors that should instead be stable by nature, and protective of them. States practice human rights quite differently, and it often first begins with the making of the reservations to treaties, and secondly with the acceptance of such reservations by other member states. The attitude initially shown sets the tone for the whole agreement, and therefore to the outcome. A treaty is to regulate a certain matter of international law, but in case it is constituted in an unclear manner, it is vague, and open to unnecessary and malevolent interpretations and ultimately to non-compliance with international law.

In brief the treaty making process involves three stages: negotiation; acceptance; and implementation. The stage of treaty negotiations is not a platform for States to demonstrate their inherent character ergo their rights deriving from cultural heritage with the intention to maliciously exploit the specificities of their country and culture to their advantage when making reservations to international treaties. In other words – cultural-historical background of a State is not to be used as an excuse, or even a reason to make contradictory reservations that are by agreement not allowed. Such differences are to be celebrated doing cultural historical research with the aim of getting acquainted to the world's cultures, and interconnectedly such varieties certainly add colour to the landscape of international law whilst those differences are not to be disregarded by any means. Nevertheless, turning the "Rubik's cube" that international law is, filled with various cultures, laws, treaties, rights, obligations and states full of people around, simultaneously cultural-historical characteristics should not be handed a discriminatory authority towards other cultures and States who all share the same rights and obligations. And this is certainly a matrix, an inherent cluster of pieces of a puzzle of international law. It is hard to ignore it, but certainly impossible to be eliminated without concurrently eliminating the variety of world cultures. Hence, it would be

treacherous on a global level, and unnecessary to do so. Hitherto, States are to cooperate and bear with each other, also bearing in mind that all nations are to be respected regardless of the cultural nuances that might look unfamiliar and are in fact foreign to an alien. The important side of this contemplation is the matter of fact that a cultural idiosyncrasy of a State should never be used as a means to discriminate any other States.

How can individual rights be reconciled while respecting the cultural sensibilities of different human groups? The American anthropologist, Melville J. Herskovits, contemplated on the issue regarding the universality of human rights and found that this is the main difficulty facing the formulation of a world declaration of human rights. He elaborates on this dilemma in this excerpt from the text entitled "Statement on Human Rights", which he wrote for the United Nations Educational, Scientific and Cultural Organization (hereinafter also UNESCO) in 1947 in response to the organization's survey on the philosophical foundations of human rights.[72]

Considering the rather lengthy period of time between today and the time when Herskovits composed the aforementioned document to UNESCO, certain aspects of the problem have been solved, but the main dilemma nevertheless remains – in what lies the solution regarding States successful cooperation via international law? Is a consensus regarding the question of legally binding norms internationally achievable? Is the goal universally achievable? Or is it, today, even a goal?

Herskovits wrote about the issue in 1947 claiming that at the time the problem was complicated by the fact that the Declaration must be of worldwide applicability indicating to the topical problems of racism and slavery.[73] We might have eliminated the aforementioned issues as history remembers them, almost entirely, but with it the tensions deriving from individual rights, and on the other hand obligations to preserve and respect cultures of different peoples hasn't vanished. The problem is old yet unsolved. Today, the issue certainly goes beyond human rights and applies to all aspects of international treaty law and hence Herskovits's philosophical contemplations can

[72] M. J. Herskovits. Individual rights and respect for all cultures, — The UNESCO Courier 2018, https://en.unesco.org/courier/2018-4/individual-rights-and-respect-all-cultures (10.03.2021).
[73] *Ibid*.

be considered concerning any type of cooperation between nations. Respect, after all, has a unitary meaning throughout temporal- and geographical dimensions.

Herskovits argued that the problem faced by the Commission on Human Rights of the United Nations in preparing its Declaration on the Rights of Man must be approached from two points of view. The first, according to which the declaration is usually considered, concerns respect for the personality of the individual as such. The person's right to its full development as a member of his society. However, respect for the various cultures of groups of people is equally important. As it is true that groups are made up of individuals and that people do not function well outside the societies of which they are part, these are two aspects of the same problem.[74] Hence, the analogous ideas expressed are both relevant whether the question may involve human right treaties in particular or international treaties in general. Laws regulate societies, societies consist of humans — it is an irrevocable connection.

In all aspects of international law — the protection of the environment, human rights etc, the whole world should work in harmony towards a common goal — that the agreements be understandable, work towards the predetermined objective, and that the goal be achieved according to the *bona fide* principle by the parties. Incorrect reservations must be eliminated and only valid reservations need be accepted in the future — reservations which are aligned with the law, and with the aim and purpose of the treaty. What, if one may ask critically, is the objective of creating treaties and concluding, ratifying them, if deviations that violate the aim and purpose of the treaty are made by some parties to the treaty, and accepted by others from the very inception of the treaty? Researchers and practitioners of international law and human rights recognize that admissibility of reservations is a grave issue causing allowance of violations in the field. Making reservations to human rights treaties is not a very established practice at this time in the sense of permissibility. But change for the better seems a prolonged mission, hopefully not a mission impossible. The world doesn't need more bureaucracy and powerless treaties — what it needs is certainty and clear rules that all States commit to follow. Otherwise researchers can keep on asking what is law and is international law really law and as comprehended, this does not benefit the mechanism that international law is.

[74] *Ibid*.

The very essence of human rights treaties is to guarantee the protection of human rights in the States that ratify them. The world is versatile, regardless of the ongoing globalization which blends the lines between certain cultural aspects between nations. The common understandings of men from different cultures are broad and overly general. They are very easily complicated by language and many other observable symbols. Universals or near universals are evidently few in number.[75] Some values are almost purely cultural and draw their significance only from the matrix of a particular culture. The latter, adding States' histories, is what makes law in comparative meaning different between States. The connection between culture and law can be rather complex. As Alenka Kocbek has argued, legal systems exist independently from the legal languages they use. No direct link can be observed between legal languages and –systems.[76] As a result, the translation of legal concepts is very complex and can lead to severe misunderstandings. Taking this into account – is it then at all possible to guarantee the protection of human rights if States cannot, indeed, agree on a treaty as one presented whole, whereas otherwise reservations would not be needed? As mentioned at the beginning of the thesis, it is said that reservations are allowed only as long as they do not contradict the core purpose of the treaty. As observed, the rule is ignored often. The practice is gravely contradictory as the ignoration, when ratifying the treaty, is automatically accepted by the parties. The reservation made by a treaty party may or may not be valid in the other States which are bound by the treaty, but this does not eliminate the fact that the reservation which oftentimes is contradictory towards the aim of the treaty, is therefore silently accepted.

Culture is not to designed to act in isolation. The change of culture is closely associated to changes in law. Culture influences law, and vice versa. A culture of equality can enact laws that respect the rights of individuals and ensure that those rights are not violated. Similarly, laws guaranteeing equal rights for women and men can encourage changes in cultural values, as well. As a result to

[75] C. Kluckhohn. Education, Values, and Anthropological Relativity. New York: Free Press 1962, p. 294.
[76] A. Kocbek. The challenges of intercultural legal communication. — International Journal of Euro-Mediterranean Studies. Piran 2008/1 (1), pp. 54-71.

such evolution, several European countries require a fixed percentage of women on corporate boards today. Even if culture changes over lengthy periods of times, it still changes.[77]
The international human rights protection system is not perfect.[78] Refrainment of equal rights to women and men, disability of freedom of speech, torture used in international humanitarian situations and detentions without trial are only a few examples of grave human rights violations that take place universally on a daily basis. Different States, of course, struggle with different violations. The correlation between reservations to treaties and such violations is evident.

Today, reporting system is used to monitor human rights violations. The problem is, that the international community has restricted prospects to remedy the faulty practise that certain States use to monitor and to periodically report on the matters. To most human rights treaties there are such large numbers of member States that it is hard to expect perfection of them and hence, discrimination is evident in various aspects regarding human rights. To emphasise – cultures are to be celebrated not oppressed but subsequently a consensus is hard to achieve especially taking into account the cultural and religious norms.[79] Culture, therefore, is simultaneously a friend and a foe. We should respect cultural differences, but at the same time, it is the cultural differences that bring to life many of the contradictory reservations made to human rights treaties.

[77] I. I. Varner, K. Varner. The Relationship Between Culture and Legal Systems and the Impact on Intercultural Business Communication. — Global Advances in Business Communication 2014/3 (1), p. 1.

[78] R. K. M. Smith. Textbook on International Human Rights. 7th Ed. Oxford: Oxford University Press 2016, p. 84.
[79] *Ibid.*

CHARPTER III: PROBLEM OF THE PRESENT DAY — STATES OPT FOR NON-BINDING AGREEMENTS

The issue of the validity to international treaties is indeed complex and influenced by various factors, but the fundamental ones seem to be the credibility of international law and the attitude of States towards it, the questionability of the meaning of signatures under an already concluded treaty and question of intent and consent, the opportunity and legal obligation of member states regarding objecting to invalid reservations, and the all-embracing interpretational issues.

Once a treaty is being concluded or when it's already legally in force, member states often find themselves in confusion or in conflicting opinions regarding the bindingness of certain provisions of the treaty. The meaning of *pacta sunt servanda* is recurrently disregarded and States act as if they were oblivious of the legal meaning and significance of a contract. Treaty parties find themselves in difficulty when interpreting and applying international law due to various factors which are all interconnected and therefore strongly influential towards one another, and in the end, towards the goal and actual outcomes of the treaty.

A rather primitive but a subject not to be underestimated often lies in the initialing of the treaty. One of the fundamental problems regarding a treaties credibility, is the bindingness of a treaty regarding the initialing of it, and an interconnected one is the question of credibility and standing of international law - its image, its flexibility which various researchers find to constitute a serious fundamental problem. Parts of international law are struggling to hold credible due to the very fact that it is legitimately being asked by various researchers whether international law is really 'law'.[80] States oftentimes act as if every act of international relations and the law that regulates it, can be proposed and acted upon as if it were a valid precedent to shape international law and if argued sturdily enough, ends up being accepted by other States who sometimes feel incapable and powerless towards such a debater. State practice shapes international law. These acts often are

[80] L. Henkin. How Nations Behave. 2d ed. New York: Published for the Council on Foreign Relations by Columbia University Press 1979, p. 825; C. J. Petallides. International Law Reconsidered: Is International Law Actually Law? — Inquiries Journal. 2012/4 (12), p. 1-2; A. T. Guzman. Rethinking International Law as Law. Proceedings of the Annual Meeting. — American Society of International Law, International Law As Law, 2009/103., pp. 155-157; A. D'Amato. Is International Law Really ''Law''?— Northwestern University Law Review, 1984/79 (5&6), p. 1293.

influential enough to undermine the power of *lex scripta*, and where international law lacks of it, it is being created by precedent. This matrix that is influenced by all actors of international law strongly affect the acts of States. The legitimacy of treaties is being questioned perpetually. Disputes arise from instances they perhaps shouldn't arise from, and States are taking advantage of it – not always by the means of *bona fide*.[81]

Klabbers argues that the challenge to the concept of a treaty is of fairly recent origin. The idea that some agreements are not legally binding, but are nevertheless concluded for the purpose of reciprocity is a novel one. Traditionally, the reasons for the distinction were not so much in that the treaties were classified into different categories, not in terms of their promising legally binding nature, but in other respects. Grotius established a distinction between treaties and sponsions, and the difference between these two lied within the legal capacitate of the person concluding them. In case the person did not acquire the sovereigns specific permission, there agreement was not legally binding.[82] Following this logic, today, there should be no question whether a ratified treaty is legally binding, as treaties are concluded between States, and in addition international organizations to whom States have delegated legislative powers to – consequently, legally speaking, there is no question of authority. Nevertheless, the dialogue whether some agreements bind their parties legally or not continues[83] and vagueness of international law and its provisions remains and perhaps even increases. For example, in contrast to the VCLT, 'treaty' has a narrower meaning in US domestic law, referring to International agreements adopted with the advice and consent of the senate, pursuant to Article II of the Constitution. Therefore merely some of "treaties" in the International sense are "treaties" within the meaning of the US Constitution.[84] Indisputably, US is a State of power from whichever angle one looks at it, and conceivably the stated matter of fact could bring with it innumerable legal disputes testing the strength of international law thereafter. The concern regarding a unitary understanding within these matters can be interpreted from international disputes, and *inter alia*, from State practice regarding the conclusive remarks when discussing matters regarding the preamble of the Vienna Convention on

[81] Violations of International law during the Annexation of Crimea include Article 2, paragraph 4 of the UN Charter; Helsinki Final Act 1975; Budapest Memorandum 1994.
[82] J. Klabbers, p. 4.
[83] S. Barrett, C. Carraro, J. De Melo (Eds.). Towards a Workable and Effective Climate Regime. Charpter 11, D. Bodansky. Legally binding versus non-legally binding instruments. London: CEPR Press and Ferdi 2015, p. 155.
[84] *Ibid*., p. 157.

the law of Treaties, by for example Mongolia, Romania and Switzerland.[85] The named States deemed it necessary to declare in the preamble of the Convention that the *pacta sunt servanda* rule is indeed universally recognized. For the sake of the treaties completeness they demanded the repetitive addition — being a 'legal principle which unquestionably had mandatory force'.[86] In summary, by recalling these fundamental principles — free consent, good faith, and the *pacta sunt servanda* rule – the nations intended to reaffirm the existence of 'rules of international conduct, in the absence of which law and peaceful co-operation between States would be impossible'.[87]

As cited earlier, numerous researchers have asked throughout the history of international law and are until this day expressing themselves on the subject whether international law can really be called 'law' in the first place.[88] The question derives from the latter example, but also from the often stated question of retribution, and added to that the question shall be discussed – why do actors of international law then, if they conclude some treaties or their provisions and requirements, for example rules to making reservations not to be legally binding, go through the effort of initiating, negotiating and concluding such treaties, spending enormous amounts of time and finances on the work? Could the reason be to officially state the possibility of one or another idea that States could work on in concert, whatever the aim of the treaty may be? It is not plausible that treaties, with no legal power, are created in order to initiate discussion between States and for them to actively engage in dialogues for the sake of actively practicing international relations. That's what meetings and forums are for. There certainly is a precise time and frame for discussion and dialogue. And that, in regard of international treaty law, is the period of negotiations.

Commonly the signing of a contract shows a parties' will to be bound by the contracts provisions. Once a treaty is opened to States to become parties — meaning that such countries then formally also agree to be bound by its provisions, it is signed and ratified. Article 12 of the Vienna Convention on the Law of Treaties, as to the consent to be bound by treaty expressed by signature

[85] UN Conference on the law of Treaties. 1st and 2nd sessions. Official Records, Document A/CONF.39/L.5 1969, p. 263.
[86] O. Corten, P. Klein, pp. 4-5.
[87] *Ibid*., p. 4.
[88] L. Henkin, p. 825.; C. J. Petallides, pp. 1-2.; A. T. Guzman, pp. 155-157.

states contractively that the consent of a state to be bound by a treaty is expressed by the signature of its representative only when the treaty provides that signature shall have that effect or it is otherwise established that the negotiating States were agreed that signature have that effect. The third option VCLT provides links closest to the general meaning of a signature below a contract. The intention of the State to give that effect to the signature appears from the full powers of its representative. But only States representatives with full powers sign treaties anyhow.

How is one to establish that the negotiating States agreed that the initialing of a text could be regarded as a means of expressing consent to be bound by a treaty? Up until now, legal literature has not assessed the problem.[89] We are of opinion that, by analogy with signature, the initialing of a text can be regarded as a means of expressing consent to be bound by a treaty when the treaty provides that initialing will have that effect or as otherwise provided by the VCLT.[90] The explanation indeed makes one consider, what would the initialing of a treaty in a contrasting understanding then mean, if not the will to be bound by the treaty? Conceivably that the initialing party considers ratification? Except in that case – did they not consider during an earlier phase? Perhaps legal scholars have not spent time on examining the question, as mentioned in the commentary on the Vienna Conventions on the Law of Treaties, due to the very reason that it is simply not necessary to do so. It is curious how controversial the leading commentary on the Law of the Treaties is on this matter, compared to law practice in any State. The kind of comments do not bring States and other treaty parties closer to a consensus on the meaning, aim and purpose of a treaty — it functions as the opposite of this scenario.

Vague basic provisions, such as the meaning of a signature in domestic law versus international law can lead to unnecessary confusion regarding the bindingness of an international treaty. It is deceptive to assume that a signature under a contract means something other than the fact that the signatory party expresses its consent to be bound by the treaty and leaving unlimited amounts of space for interpretation in this regard is regrettable.

[89] O. Corten, P. Klein, p. 229.
[90] A/CN.4/191, p. 196.

As this question seems to be creating plenty of confusion, let us agree on nominating the stage in which a treaty is after signing and before ratification a "pre-ratification period", which could be analogous to any trial period relating to other types of legal matters.

Analogously could be viewed, for example, the period of an engagement before marriage, which does not bind the partners to fulfill the expected legal contract; or a test-drive of a vehicle or a trial period of any type of electronical equipment; a test period of an online educational course or another applicable relatable subject. If the engaged people realize after a period of time that the chosen partner is not exactly who they expected them to be, they can still break off the engagement any time without any legal consequences; if the customer is not satisfied with the car or the electronical equipment, he can return it within a certain period of time; the student can cancel the membership of a course etc. Overall, before actually committing to any contract, to buying the product, the customer can test the products value – the party is allowed and expected to do that. But after the trial period, it is already harder to withdraw the consent. That would be, in a case of an international treaty, what the treaty becomes after the ratification of it — a legally binding international contract between States or in addition to them, other actors of international law.

Could the pre-ratification stage of a treaty be then interpreted as a trial period? Consider that before ratification, the treaty doesn't bind its parties with its full powers. During a typical trial period a party to an agreement is allowed and encouraged to try out all of the functionalities that the not-yet binding contract incorporates. With the pre-ratification stage of an international treaty such rights are not a natural supplementation.

It is of common knowledge that the signing of a legal document means that the party understands the contents, and consents to the stipulations of the treaty. A signature represents consent of the signatory in any law system. It means something different with regards to international law, but what exactly is left unclear. The commentary does not provide the answer as to what does the initialing of a text, if not what it means in any States law, then mean. Today, in practice it means what the parties decide it means. The vague interpretation which divides the meaning of a signature into a subject of intrinsic and extrinsic proof[91] does not assist us any further either. It is problematic that some treaties and some signatures are found legally binding, and others are binding only if it

[91] O. Corten, P. Klein, p. 230.

is found convenient at a certain time and situation, and subsequently every provision of the treaty is arguable.

The need for a certain degree of flexibility in international treaty law is undeniable, logical and comprehensible. I personally find it troublesome that interpreters of international law themselves interpret provisions of law in such vague manner, and surely it does add to the problem that international law is not always respected by its very actors – States and international organizations. International law is violated repetitively, often by powerful States,[92] and the consequences can be grave as history has shown.

Needless disputes arise from the vagueness of law, and such commentaries to law which observe the problem but vocalize nothing concrete on how to behave in a problematic situation only stir the water. Analyzing statements such as the aforementioned one makes one wonder why documents, commentaries like this were ever worked on at all. Does practice like this add to the solving of issues of international law or does it add to the vagueness of it? But law, in its essence, should be anything but vague – on the contrary, it should be understandable and clear to all.
It seems that the reason for this practice of concluding treaties but simultaneously not accepting their juridical bindingness of certain aspects, is to give states the platform to show one's 'willingness' to do as prearranged and agreed upon in a certain treaty is simply not convincing. It hints to a fraudulent type of political move, instead.

It is only logical that if parties agree upon something, they are also bound to act in accordance with the contract. *Pacta sunt servanda* principle, the basis of any legal agreement, is not to be taken lightly, and it surely is not optional in its nature even though argued so by some legal theorists. The soft law perspective which sees the issue of parties acting in compliance with the agreement without any coercion through the lens of benevolence and goodwill is shortsighted and ominously naive. History of international law has provided researchers with innumerable events which prove that often when an actor of international law can find a loophole in law, it will use it for its own benefit even when it's clear to any observer of international affairs that the actor is indeed culpable

[92] D. A. Koplow. Indisputable Violations: What Happens When the United States Unambiguously Breaches a treaty. — The Fletcher Forum of World Affairs 2013/37(1), p. 53.

of violating legal ethics which are reflected in basic provisions of international law — only not precise *lex scripta* or customary law.

The perspective could be vexatious. And perhaps that, if nothing else in international law, could be a plausible argument for legal consequences such as punishment. In constitutional law systems, after all, in case of an unlawful act, usually with the requirement of a proven intent by the actor, the act is also imposed to a sentence. If in no other cases, then in repetitive violations of international law by one and the same actor, or a clearly similar act which has been discussed by the international law community and hence is known to most, and then nevertheless committed by another actor of international law, the violation could, in theory and in practice, be punishable. The possible benefits of such change in international law would be calculable. *Inter alia*, the benefits would include more effective law enforcement by actors of international law themselves, and an expected result for the counterparty as the possibility of an atrocious surprise would then be diminished. Law and its applications outcomes should be predictable.

It is of no surprise that States perpetually violate international law, the innumerable disputes and court decisions speak for themselves. Nevertheless – *pacta sunt servanda* and violation of contracts is not to be encouraged by vague provisions, cowardly omissions of objections to invalid reservations or remaining neutral in a critical situation, where say, human lives are at stake, as it often happens to be the case when it comes to human rights violations regulated by international treaties. Anthony D'Amato, professor of international law and human rights has said that the fact that some States regularly violate rules of international law does not itself mean that those rules are not rules of 'law,' as in domestic society people break the law from time to time as well but we refrain from asking whether the broken rule was actually law or not. On the other hand, he argues further, the fact that most states follow most rules of international law most of the time is not sufficient to call those rules 'legal' either. If it is possible for States to violate rules with impunity and the reason for the violation relies within national interests, how can we call those rules "law"? Furthermore, we acknowledge that physical coercion is not a necessary element of "law." However, we do not wish to conclude that it is totally redundant, since we have seen many cases where a nation violates international law while no punishment follows the illegal act. "Hence, we are somewhat, though not totally, persuaded that international law can properly be

labelled "law" for most purposes. But we may remain unconvinced, at this point, that it is *really* "law.""[93] D'Amato's clear and precise analysis on the topic of whether and on what conditions international law is law gives valid arguments regarding both sides of the question and fairly so – I believe this is the core essence of why some actors of international law violate norms of international law repetitively, and probably knowingly – the very fact that the question "is international law really law?"[94] can earnestly be asked wavers its determination and credibility and consequently presents the possibility to violate it.

The reservations regime instituted by the Vienna Conventions does not impose static solutions on contracting States or contracting organizations; rather, it leaves room for dialogue among the actors. The dialogue between the reserving State and other affected actors of international law is rather unregulated. The possibility of this "reservations dialogue" is confirmed by the *travaux préparatoires* of the 1969 Vienna Convention and is reflected in the treaty practice of States.[95]

If the norms to treaties existing today are considered rigid by some actors of international law, to what lengths should the flexibility stretch? There has been plenty of discussion within legal literature on why States should resort to cooperation amongst each other as States are often regarded to be anarchic environments. On a very general level the answer is dualistic. Either states cooperate in the interest of a common purpose or their cooperation derives from the possible corresponding benefits.[96] To achieve the results two or more States who wish to cooperate towards either of these prementioned variations of goals, or both, common grounds of perception and understanding of the law are essential. Accomplishing the intended result largely depends on the interpretation of legal terms, indubitably, but not only.

Jan Klabbers, being one of the leading experts of the field, finds that States turn to other measures than treaties now and that is the consequence of treaties being found too rigid as tools.[97] On the other hand, Ulf Linderfalk argues that for political reasons, states are decreasingly less willing to

[93] A. D'Amato, Is International Law Really 'Law'?, 2010 p. 6.
http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/103 (01.01.2021).
[94] L. Henkin, p. 825.; C. J. Petallides, pp. 1-2.; A. T. Guzman, pp. 155-157.; A. D'Amato, p. 1293.
[95] A. Pellet, p. 2.
[96] J. Klabbers, p. 25.
[97] *Ibid*., p. 27.

rely upon customary international law for the regulation of legal matters. The rising trend in international exchange has proven the evident need for an ever more precise and flexible international law – a need not satisfactorily met by customary law,[98] whereas it is questionable but indeed interesting what precision and flexibility can achieve in concert.

Addressing the two aforementioned ideas herein, Alain Pellet in his Seventeenth report on reservations to treaties stresses the importance flexibility in these matters. For example, the draft recommendations or conclusions on the reservations dialogue include "recalling that States, international organizations and monitoring bodies may express their concerns about reservations," while it is recognised that third parties are such actors who may express their concerns but the monitoring bodies must do so. Finally, the document "expresses hope that states, international organizations and monitoring bodies will initiate, undertake and pursue such dialogue in a pragmatic and transparent manner," which of course is a noble and forward-looking idea, but nevertheless, without obligation, the results are dubitable. For States, these guidelines could result to be confusing. It seems indeed that, in practice, the trend in international cooperation is changing towards less-strict agreements. All too formal and visible agreements make it politically difficult for States to change their policies making flexibility the desired trend.[99] Perhaps that is the reasoning behind the generally rather relaxed and liberal comments and recommendations in Alain Pellet's Seventeenth report to international treaties which unquestionably are valuable suggestions, however not precise nor strict, leaving an interpreter confused with scepticism and uncertainty on how to react to such suggestions, and weather they are in fact, or should be applicable. Reasonably that's why the reports haven't been adopted as legally binding sources of international law. Law, and sources of law, are supposed to be clear and precise, and should leave minimal room for misconception and doubtfulness. It is a matter of the principle of legal certainty, which as well as to national law, also applies to international law. Even though Philip Allott declares that a treaty is a disagreement reduced to writing, and that the eventual parties to a treaty enter into negotiation with different ideas of what they want to achieve,[100] which of course might be true at certain

[98] U. Linderfalk, p. 1.
[99] J. Klabbers, p. 27.
[100] P. Allott. The Concept of International Law. — European Journal of International Law 1999/10 (1), p. 43. http://www.ejil.org/pdfs/10/1/577.pdf (01.01.2021).

occasions, I perceive a certain amount of irony in this claim, and must reduce my analysis to the classical idea of treaty law – that parties entering into a treaty come together for a common goal.

Mere suggestions that States which regularly violate international law should avoid such practice, has not shown any results as in solving the issues of the existence and ongoing practise of creating novel invalid reservations etc. However, Alain Pellet does not believe that the ILC should seek to form a specific legal regime for reservations. He believes that such an endeavour should not even result as even a part of merely a non-binding legal instrument. "Any attempt to systemize practice in this field — which while abundant, is extremely diverse — is bound to fail and will undermine the flexibility of the modalities of the reservations dialogue."[101]

Resolving issues of treaty interpretation demands the time and skills of many different authorities: national courts, /…/ diplomatic personnel, international courts and arbitration tribunals, international organisations, and so on – they are the appliers of international law.[102] An important aspect of practicing international law which should not be undervalued or ignored, relies in its objects: international law is typically practiced by politicians who are often not professionally trained (international) lawyers. Even when legal statements of a politician are drafted by the legal department of their office, the political language and mannerisms used to present the ideas somehow often make the juridical idea fade. Therefore, it seems that in practise part of the legal agenda becomes a mixture of law and politics, which is as well expected and habitual in international law.

International relations and politics, for which international law is a tool of communication, often through actions, grey areas are known to be reoccurring typically in comparison to other spheres of law such as for example, a State's penal law, which as a rule tends to be extremely strict. Relying on the hope that such a practitioner operates in good faith honouring the basic principle of rule of law, is in an uncompromisingly forthright way short sighted. The danger to international law lies in the practitioners' ambition derived from the thirst of power which may lead to unlawful results – such as reservations in contradiction with the object and purpose of the treaty. But results like this remain too often unchallenged without other States objecting to them, and later remain

[101] A. Pellet, p. 31.
[102] U. Linderfalk, p. 1.

unchanged due to the foreseen bureaucracy. That is, in most simple terms, the slippery slope fallacy of the formulating of unlawful international law. With every such international act the pile of incorrect law increases. Additive precedents are being made perpetually, and therefore actors of international law can rely on those precedents in their next act or in case a legal dispute arises. Such precedents can be used and, they are abused. It is easy to incriminate that, even when perceptive that an act being made is derived of something morally and legally incorrect when the customary law via States actions expresses something different.

Probably one of the most important and meaningful rules of the VCLT includes the expressions "object and purpose" of a treaty (Article 31.1). Whatever the object and purpose of a treaty may be, this is what the member states have come together for. Within the object and purpose relies the essence of the international issue that needs juridical regulating. The treaty interpretation method of the "object-and-purpose" provided in Article 31.1 is not defined in the VCLT. As seen, the term can be subject to various views in its meaning for treaty interpretation.[103] The majority of legal issues with the validity of certain reservations to treaties lies in contradiction to the object and purpose of a certain treaty. The repetition of the term 'object and purpose' throughout the VCLT shows the position of it of a treaty in its purposes.[104]

Richard B. Bilder on a general level, has contended that the choice for 'nonbinding arrangements' may partly be dictated by the desire to "manage the risks of international agreement".[105] Those risks are, potentially, diverse, and can be classified in three broad categories The first category expresses the risk that the State may later reconsider or decide that is wishes to withdraw from the agreement. The second category states that the internal benefits of the agreement for the State may diminish in time to such an extent that the potential benefits perhaps will not meet the costs, or that the costs will exceed of them. And the final category proposes that the other treaty party may not value the *pacta sunt servanda* principle.[106]

The first two of those three categories proposed by Bilder can be interpreted as the tendency and request to practice ambiguous agreements to which the parties are legally bound only when it

[103] Chang-fa Lo, p. 180.
[104] *Ibid.*, p. 179.
[105] R. B. Bilder. Managing the risks of International agreement. — Michigan Law Review 1981/80 (4), pp. 24-34.
[106] *Ibid.*, pp. 14-15.

seems so fit. The blurring of the normativity threshold[107] – as Weil succinctly names it. It is not simple for a jurist to determine what can, indeed, be called the normativity threshold as the acts performed by subjects of international law are vastly different in nature. Determining where exactly the line between legal and non-legal runs as well as what constitutes a norm and what does not is extremely hard.[108]

The third category, on the other hand, displays the rooted understanding that States in general wish to be freed of strictly binding treaties, and that States in practice are not to trust one another. The example practically illustrates how a State A does not confide in a State B and concurrently State A expresses its own distrustfulness towards A. Bilder further argues that treaties are inherently risky: they compose risk of loss and injury. ‘’Even if the treaty is fully performed, one nation may find that it made a bad deal and that the treaty’s intrinsic value does not outweigh its costs.’’[109]

The argument that treaties are not always suitable vehicles relates mostly to domestic procedures and guarantees.[110] Even though domestic law must be in accordance with international law’s principles, some States do not wish to give in to the ‘one world’ view of international law’s provisions and it’s superior force. For example as discussed, certain Islamic states are well known for explaining rather clear contradictions regarding the making of reservations to human rights treaties with primary cultural beliefs or traditions of the given society. Even when most probably realizing that the possible victims of the practise are their own nationals, moreover on their own territory.

The fact that morals and traditions cannot be directly altered in a manner that laws can, does not indicate in any way that other forms of change will not affect them in a way that results in change. “Indeed though a moral rule or tradition cannot be repealed or changed by deliberate choice or enactment, the enactment or repeal of laws may well be among the causes of a change or decay of some moral standard or some tradition.”[111] Treaties are the means of international cooperation among nations ‘whatever their constitutional and societal systems’. The purpose of this provision

[107] P. Weil, p. 415.
[108] *Ibid*., p. 415.
[109] R. B. Bilder, p. 959.
[110] J. Klabbers, p. 30.
[111] H. L. A. Hart, p. 176.

of international law is to lay an emphasis on the universality of treaties and the equality of contracting States, disregarding any differences deriving from societal and political structures.[112]

In today's world the question of strict law versus soft law is regrettably simultaneously a question of a States' representatives popularity amid the liberalizing international community. In 1977 the French philosopher Michel Foucault said, "What we need /…/ is a political philosophy that isn't erected around the problem of sovereignty /…/. We need to cut off the King' s head: in political theory that still has to be done."[113] Strict rules are not popular nowadays.

In some respects, norms of international law remain abstract and therefore development is needed to achieve precise meaning of them. In regard to certain other arguments, international law recognises no norm at all, but a lacuna. And some find the rules of international law simply too controversial.[114] But this direction taken, for international law, is a slippery slope fallacy. One liberalized rule leads to another until the limit is met. And what would the limit resemble? The following comparison may seem radical and exaggerated, but it seems possible that it would result in World War III. Following the rules of logic, it seems to constitute a plausible uncalled-for possibility. After all, the centre of international law, the United Nations, was created after the Second World War with the primary intention to maintain global peace and security, seeking to achieve the desired results via juridical regulations governing the relationships between States. International law community is not to forget the reasoning aforementioned, why States started to cooperate via juridically regulated relations in the first place.

The slippery slope fallacy begins to have effect the moment creators of law, which consist of states representatives, adopt vague, soft law, vulnerable to adopt fallacious provisions, and states and other actors of international law use the situation to their personal benefit, disregarding the collective needs of the international community. Writers have been apt to point out a weakness: alongside hard law, made up of the norms creating precise legal rights and obligations, the normative system of international law comprises, they note that an increasing amount of norms

[112] O. Corten, P. Klein, p. 4.
[113] M. Foucault. Power/Knowledge: Selected Interviews and Other Writings, 1972-1977. C. Gordon (Ed.), New York: New York Vintage Books 1980, p. 121.
[114] P. Weil, p. 414.

whose substance according to Weil is so vague and uncompelling, that "A's obligation and B's right all but elude the mind".[115]

That's when international law provisions are truly most vulnerable, at the state of one's own birth, when with the signing process comes the opportunity to embed reservations. The process is not monitored enough, obviously, hence the numerable invalid reservations. The United Nations' International Law Commission has initiated many of the fundamental multilateral treaties which determine how states are to act regarding certain matters. Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women are to name only a few of the treaties that the United Nations General Assembly has adopted. Keeping the global peace and security, which as mentioned is the aim of the principle international organization, is rather difficult, and more often than not impossible, when the law is vague, provisions are unbinding or optionally binding, there is always room for dialogue, and everything is arguable and questionable.

A reasonable debate differs from an unhewn dispute. In the first instance, the parties accept the fact that all provisions of a treaty are binding to its members, unless a valid reservation has been made. In case of such a debate, parties know and therefore agree upon the facts of the matter, leaving some room for the interpretation and importance of various aspects of them. In case of an unhewn dispute, on the other hand, parties don't agree upon the facts of the matter on an equal level – they question the bindingness of a certain provision which, nevertheless, is laid down in the treaty. Civil debates are becoming less in number compared to the blunt disputes. And that is both a problem for the effects of a certain treaty, and the international law at large. This phenomenon is acutely called "treaty fatigue" – non-bindingness is more and more popular amongst actors of international law. Such practice should be considered dangerous. To where does it lead? – should be the essential question. Perhaps towards an even more of a hectic chaos in the sphere of international law regarding the bindingness of legal provisions and invalid reservations?

[115] *Ibid*.

The more treaties that are concluded, the more treaties that will have to be applied; and the more treaties that are applied, the more often the question will arise: To what extent, and under what specific conditions, should such an application occur? Naturally, this includes the question of how treaties ought to be deciphered.[116] Powerful states often prefer vague law, enabling them to set the terms of the disclosure and present plausible interpretations that advance their interests, which weaker states have trouble resisting. This relationship doesn't necessarily need be in this order, but more often than not it is. Violations of hard precise law are more easily branded as such in the court of international governmental and public opinion, imposing reputational costs if nothing else. This is why some critical legal theorists regret the creative interpretation of flexible norms and call for a return to formalism.[117]

Within international law certain documents provide - in idealistic practical scenario but sometimes merely in theory - legally binding norms and others are meant as references to good practice. What does it in essence mean that a certain agreement is legally binding? Quit deceptively but simultaneously simply, the answer is that any legal agreement must be subjected to a certain legal system. In the case of international law we mean that the agreement is governed by international law, as opposed to agreements being governed by, say, French law, /…/, or the law of any other domestic legal system.[118] But if actors of international law continue to struggle, voluntarily or not, in this hectic field which in theory, could be said, is quite orderly regulated, but in practice innumerable disputes arise nevertheless on daily basis, because of the uncertainty towards supremacy of international law as well as the perhaps excessive room left for interpretation, or unwillingness to accept international law in a higher position in hierarchy in comparison to constitutional law, the situation does not improve. It is extremely hard to play a game with parties using different rules causing disputes on the question whether one or the other actor behaved according to the rules. Formalism might not cling as popular tone in today's global society, nevertheless it seems best to return to it. Otherwise, the system appears to fall apart.

[116] U. Linderfalk, p. 1.
[117] S. Chesterman, D. M. Malone, S. Villalpando, A. Ivanovic (Eds.). The Oxford Handbook of United Nations Treaties. Oxford: Oxford University press 2019, p. 31.
[118] J. Klabbers, p. 38.

The distinction between agreements governed by domestic law or by international law is needed to comprehend by which legal system agreements are in fact governed.[119] The requirement that can be read into article 2, paragraph 1 (a) of the 1969 Vienna Convention stating that a treaty is an international agreement concluded between States in written form and namely governed by international law is the very phrase which served as the prominent cause of confusion regarding the determination of the legal nature of international agreements.[120] As everyone knows, the international normative system, given the specific structure of the society it is called on to govern, is less elaborate and more rudimentary than domestic legal orders – which, of course, does not mean that it is their inferior or less "legal". It is just different in various aspects.[121]

What is the essence and meaning of this all-governing law that governs and regulates, and directly affects all its subjects? P. Guggenheim has said in his *"Traite de droit International public"* that public international law is the aggregate of the legal norms governing international relations.[122] This illustrates how the concept of international law is defined by both its nature as well as purposes. It demonstrates what its subjects must comprehend as prescriptive, prohibitive and permissive norms. Its functions lie in "governing international relations." International law is at once a "normative order" and a "factor of social organization."[123] Does international law really live up to its prescribed function, is today as it was yesterday, a standalone issue. The theory can be as developed as it is, what again matter substantially, is how the actors of international law use it.

Agreements become governed by international law due to the law of treaties. Applicable international legal norms are, predominantly, but not solely the rules which make up that body of rules of the VCLT.[124] By default, agreements become legally binding due to the principle of *pacta sunt servanda*. The exact purport of the rule is not to lay down a norm of conduct, but /…/ to authorise states to create obligations binding on themselves by creating treaties.[125]

[119] J. Klabbers, p. 56.
[120] *Ibid*., p. 55.
[121] P. Weil, p. 413.
[122] *Ibid.*
[123] C. Rousseau, Droit international public. Paris: Dalloz 1971, pp. 25-26.
[124] J. Klabbers, p. 38.
[125] R. Lavalle. About the alleged customary law nature of the rule Pacta sunt servanda, ZÖR 33, 1982, pp. 9-28.

A vivid example of practise follows illustrating the reality of the above discussed problem's summary: not all actors of international law comprehend the essence and use of it similarly, neither is it at this point understandable to all what actually constitutes a reservation. The interpretative declaration made by Uruguay when acceding to the Rome Statute of the International Criminal Court, for its part, was the subject of objections by Denmark, Finland, Germany, Ireland, Norway, the Netherlands, Sweden and the United Kingdom. All these States stressed that the objection was, in reality, a reservation prohibited under article 120 of the Rome Statute. This is, in fact, a perfect example of one of the reservations made to international treaties that was expressed in disguise. It is not always easy to discover an invalid reservation. Uruguay, in turn, justified its position in a communication sent a letter to the Secretary-General explaining that The Eastern Republic of Uruguay, by Act No. 17.510 of 27 June 2002 ratified by the legislative branch, gave its approval to the Rome Statute in terms compatible with Uruguay' s constitutional order. In belief that the Constitution is a law of higher rank in Uruguay and that all other laws are subject to Uruguay's Constitution, this does not constitute a reservation to that international instrument.[126]

The Act drawn up by the Eastern Republic of Uruguay does not limit the Rome Statute in any way. The interpretative declaration made by Uruguay upon ratifying the Statute does not, therefore, constitute a reservation.[127] International Criminal Court exercises its jurisdiction solely in the case of non-existence of penal law provisions of a particular State which as a stimulus fails to adjudicate accordingly in a given situation. Whether as a result of the numerous objections by other member-states or as a stimulus of some other relevant aspect, the Eastern Republic of Uruguay withdrew its reservation in disguise, although only six years posterior to the dialogue. Due to the pressure created by the objections of the other aforementioned states, Uruguay had to yield its case.

Reservations to certain other treaties have given rise to numerous objections and have often been withdrawn or modified by the reserving States. Such is the case of several reservations to CEDAW, for example. Some of the controversial reservations, however, were withdrawn only much later,[128]

[126] A. Pellet, p. 11.
[127] *Ibid*., p. 12.
[128] *Ibid*.

and it's reasonable to believe that time is of essential matter regarding critical matters such as, for example, violations of human rights, which often fall victim to invalid reservations.

The importance of objections can be noted on numerous occasions in the history of treaty law and reservations. A State can try and push through an illegal reservation but will not get far in case other States act in their legal capacity to object to such reservations. Actors of international law must act towards the common goal of worlds peace whereas it is noteworthy that inaction can at times cause more damage than actively fulfilling one's legal obligation – vocalizing the problem when taking note of an invalid reservation. It is understandable that some States, due to political relations and diplomatic reasons rather opt for remaining reticent, but it is of great importance that States find the courage of speaking their true minds. States really can't live in constant fear of yet another armed conflict between themselves. Stating the truth should not be a reason for war. Yet more often than not it seems to be the reason for this unnecessary silence – practicing the active inactivity of non-objection which speaks volumes of the legalistic-political interconnected state of mind of a State.

According to Vienna regime, an objection in itself can be considered as one aspect of the reservations dialogue. Nevertheless, the number and consistency of the objections play a substantial role. Every treaty party, including the reserving State certainly pay more attention to a large number of objections than an isolated objection. As a matter of fact – any interpreter of law would pay more attention to a reservation objected by multiple actors of international law.[129] A single objection might get ignored or totally opted out whereas a bundle can make a significate difference as the latter speaks of a collective mind. As the famous African proverb states – if you want to go fast, go alone. If you want to go far, go together. The fast track would in indirect sense contribute to the making of an invalid reservation. Advocating for solid treaty law and valid reservations exclusively should be a collective goal of all States and other actors of international law. When rules are clear, it's easier to play. And that goes for everyone – even those actors who are infamous for violating the law, or using its loopholes to its own benefit in *mala fide*. They

[129] Y. Tyagi. The Conflict of Law and Policy on Reservations to Human Rights Treaties. —British Yearbook of International Law, 2000/71, p. 216.

would benefit in the way that there would be less international disputes, less expenditure, and matters of international relations would move further with less unnecessary distractions. It is an equally beneficial situation when parties of treaties speak up against invalid reservations, which, as seen among others in the example of the Eastern Republic of Uruguay, can achieve intended results.

The more consistent the practice of objections to certain reservations, the greater their impact on assessment and determination of the validity of these reservations and of any other comparable reservation, including in the future.[130] Making objections collectively gives greater weight to the matter. And it is of great importance that States analyse reservations in depth keeping in mind that sometimes they come in disguise, as was seen in the example of the Republic of Eastern Uruguay when acceding the Rome Statue. Contracts, whatever form they may come in, or under which ever title they may be presented, must be analysed by experts of high rank and legal training in order to avoid disturbances in the practise of international law.

[130] A. Pellet, p. 13.

CHAPTER IV: PROPOSAL FOR A SOLUTION — A FUNCTIONING MONITORING BODY FOR SOLELY THE ISSUE OF RESERVATIONS

A distinguished organized precedent of partnership between states is provided by the Council of the European Union Working Party on International Public Law. Very little is known about the work of the group and even less is documented.[131] A group, which meets periodically and discusses certain actual issues could be beneficial in the question of validity of reservations to treaties among many other questions. A similar working group could be concluded to discuss issues regarding treaties, e.g. reservations, within the whole international community.

Within the framework of the European Union, cooperation on reservations has emerged within the Council of the European Union Working Party on International Public Law (COJUR), which is composed of the legal counsels of member States and meets periodically. The purpose of this cooperation is, inter alia, to establish a forum for a pragmatic exchange of views concerning reservations that present legal or political problems.[132]

The Council of Europe Committee of Ministers stated that it was concerned by the increasing number of inadmissible reservations to international treaties, especially reservations of a general character.[133]

When a State purports to formulate a reservation to a constituent instrument of an international organization, some dialogue must take place within the framework of the competent organ upstream of the acceptance, or refusal of acceptance, of the reservation.[134] Perhaps the dialogue should be mandatory, a monitoring body could be formed for the benefit of treaties of solid quality witch would simultaneously be functional and well thought through.

With respect to the Council of Europe, the Special Rapporteur Alain Pellet has, on several occasions, drawn the Commission' s attention to the initiatives taken and results achieved within the framework of this regional organization in cooperation on reservations-related matters.[135] An

[131] M. Koskenniemi. Finnish Yearbook of International Law, Reservation Issues in the Mixed Agreements of the European Community. Leiden: Martinus Nijhoff Publishers 1999, p. 378.
[132] A. Pellet, p. 13.
[133] *Ibid*., p. 15.
[134] *Ibid.*, p. 3.
[135] *Ibid*., p. 14.

efficiently functioning commission, for example with rotating leadership consisting of not only the members of European Union, but of all regions – Asia, the Americas, the United Kingdom of Great Britain and Northern Ireland and Africa included. The rotating leadership of such a commission could be exchanged randomly every so-many-years, to keep the work of the commission impartial and just.

As a functional example, Council of Europe shows the way. In order to assist member States and encourage them to exchange views concerning reservations formulated in respect of multilateral treaties drafted within the Council of Europe, a European Observatory of Reservations to International Treaties was established by the Ad hoc Committee of Legal Advisers on Public International Law (CAHDI). In its work, the Observatory attempts, inter alia, to draw member States' attention to reservations that are likely to give rise to objections, a list of which is prepared by its secretariat.[136]

When the Soviet Union during the Cold War tried to prevent the voting majority in the General Assembly from blocking its own candidates for membership to the United Nations, International Court of Justice (ICJ) in Its advisory opinion regarding Conditions of Admission of a State to Membership in the UN in 1948 explained that the requisite conditions are five in number: to be admitted to membership in the United Nations an Applicant must 1) be a state; 2) be peace-loving; 3) accept the obligations of the Charter; 4) be able to carry out these obligations; and 5) be willing to do so.[137] The requirements posed to becoming a member of the Charter of the united Nations could and should be applied to any UN treaty. Subsequently from this idea hereinafter, all international treaties must take the UN's treaty of treaties as guidance.

It is time for the matter to be tackled at a global level. The problem of the validity of reservations to international treaties should be dismantled separately from all other issues as history has proven that may it remain a general question among many others, a solid solution refrains from the practice. The International Law Commission could form a working group whose job would be to analyse every aspect regarding reservations to treaties. A separate session should regularly be

[136] *Ibid.*, p. 15.
[137] Summary of Judgement. Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion of 28 May 1948, https://www.icj-cij.org/public/files/case-related/3/1823.pdf, p. 4. (15.08.2020)

dedicated solely to the question of the validity of reservations to international treaties. The proposal could consist of a working group that entails the minimum of following characteristics:

1. Membership:
   1.1 The working group should involve with its work all parts of the world. Divisions are welcomed, *inter alia*, by geographical coordinates.
   1.2 Rotation of membership. The members should rotate in certain intervals. For example, the members could change every 3-5 years giving sufficient time to get comfortably acquainted with their subject matter and at the same time avoiding corruptive behaviour which, could be observed in certain groups or commissions with permanent members.
2. Work content:
   2.1 Principle of consistency regarding consideration of time factors. The working group meets annually or every so-many-years based on regularity. It analyses reservations to treaties based on agreed time factors in relation to treaty creation and ratification. Certain problematic reservations to treaties should be worked through posteriorly whereas the sub-question of then declared invalid reservations shall be eliminated from the treaty.
   2.2 Principle of consistency regarding working methods: All reservations are to be analysed according to precisely the same requirements.
   2.3 Principle of efficiency regarding ensuring of expertise: the working group ensures a professional approach to both legal and political issues related to reservations to treaties.
   2.4 Principle of efficiency regarding aggravation of a certain treaty: each treaty is to be analysed separately.
   2.5 Sanctions. Which body or bodies decides upon culpability; which institutions apply sanctions; what constitutes a sanction; which body monitors the execution of the sanctions.

   Note: Sanctions are considered an integral inseparable part of this regime and due to the volume of problematics therein, would be a separately standing topic for another possible thesis.

CONCLUSION

Even though Alain Pellet deemed it unnecessary and bound to failure to attempt any such endeavour[138], he has expressed his agreement in the regard that it is of common interest of all states that treaties to which they have chosen to become parties are respected as to their object and purpose by all parties. He has as well stated that it is important that States are willing to commence any legislative changes necessary to comply with their obligations derived from the treaties they are members of.[139] May the issue of reservations to international treaties be as complex as it is, the legal problem can and should have a solution. Marking the words of Special Rapporteur A. Pellet and the very beginning of this master's thesis, "precisely because, the Vienna Conventions did not establish mechanisms for assessing the validity of a reservation, each State and each international organization, individually and from its own standpoint, is responsible for assessing the validity of a reservation."[140] While agreeing with this idea completely, I do not find it sufficient as to finding a universal solution to the problematic evaluation of reservations to treaties. It has been proven that 1) many states simply do not object to invalid reservations or what seem as such, and 2) objections do not carry a sufficient weight to eliminate such reservations from treaties. Therefore, a unitary system would be of benefit in this regard. Fortification of international law is of benefit to all of its actors. A certain amount of confusion regarding the binding and non-binding rules would decay; it would be easier to navigate in the VCLT norms regarding reservations; and a preventive function would lie within the scope of possible sanctions.

As well as establishing a separate working group proposed in the solution, reservations which contradict the object and purpose of any given treaty and exist nevertheless shall be withdrawn or deemed invalid and without any legal force; if the option of withdrawal seems inappropriate to the reserving State, it may withdraw its consent to be bound to the treaty. Principles of good faith must be kept in mind regarding all aspects of international law and every action thereof. Kerstin Mechlem, lecturer of human rights and international law has stated that if the customary legal rules of interpretation codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties,

[138] A. Pellet, p. 31.
[139] *Ibid.*, p. 9.
[140] A. Pellet. Seventeenth report on reservations to treaties. A/CN.4/647. Geneva: United Nations 2011, p. 8.

would be applied correctly requiring attention to the text, context, and object and purpose of the treaty, in a much more systematic manner than currently practiced, these deficits could in large part be addressed.[141] Article 31 of the prementioned convention states that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Article 32 states that supplementary means of interpretation may be needed if confirmation of the interpretation according to article 31 is called for because the latter leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable. These guidelines, if adopted to all treaty policies regarding reservations, would strongly add substance and assertion to them. Reservations and interpretations of norms, terms or anything else regarding treaties should not be something which States can use to their malicious benefit however seems fit at a particular moment in time. *Inter alia*, Continuous practice is what constitutes international law and only acts made in good faith should be accepted. The constant disputes on the topic of the validity of reservations to international treaties prevail until the system is strengthened though action. That will entail, of course, working through an enormous amount of reservations which are in force today. Time and finances spent, extensive bureaucracy and novel disputes are to be considered, but in my opinion, it would be advisable.

The practice of objecting to invalid reservations should be reinvigorated minimally to the state they were approximately in the years of 1950-1960s and thus thoroughly re-introduced to all subjects of international law. The question of unanimity versus the question whether perhaps a super-maximum effect objections should be practiced remains to be debated upon. It might seem that the principle of unanimity could be rather hard to be successfully reintroduced to the sphere of international law. Even though the super-maximum effect objections introduced by Jan Klabbers might at first glance seem rather extreme as well, I think this approach would provide the more convenient road back to the legality of jurisprudence in the matter. This certainly is a dispute between soft law and hard law. The latter is perhaps a matter of taste, but nevertheless what should be the objective of any legal act and any legal action by any legal actor is, surely, the common goal, the international societal benefit and the progress of international law instead of the excessive amount of regress that can be observed at this time in this regard.

[141] K. Mechlem. Treaty Bodies and the Interpretation of Human Rights. —Vanderbilt journal of transitional law. Ulster: Maastricht Center for Human Rights, 2007/42 (905), p. 906.

A topic from hereinafter which should be researched and developed on is sanctions to violations to international treaties. This could entail violations such as the ones discussed in this Master's Thesis, regarding the making of reservations; but also a wider view of sanctions with regards to international law could be taken – who decides upon culpability, which institution applies sanctions; what constitutes a sanction in international law; who monitors the application process and who monitors the process of serving the sentence; and so forth.

When exactly does a "nonbinding agreement" turn out to be an international agreement and a promise into a unilateral act? When does a fact turn into custom? "This problem of transition from nonlaw to law occurs in all legal systems, but the multiplicity of the forms of action secreted by the needs of international intercourse has rendered it more acute in that field than in any other, since in the international order neither pre-normative nor normative acts are as clearly differentiated in their effects as in municipal systems."[142] Agreeing with the idea of sanctioning within international law, the notion of an agreement or a norm being legally binding is often /…/ tied to the possibility of having the agreement or norm enforced in a court of law.[143] A law without a sanction, in John Austin's view, was simply "law not properly called so". The Austinian interpretation of the essence of sanctions has for the most part been discarded today, nevertheless it can at times be observed to return,[144] just as the call for the return of formalism.[145] Indeed, international law has become too flexible – hence the numerous continuous violations to reservations to treaties, among other violations. Since the British legal philosopher H. L. A. Hart published his seminal book "The Concept of Law", there is general understanding between legal philosophers that the fact whether or not a certain norm can be enforced or can possibly be responded to by means of a sanction has little to do with whether it can be called a legal norm.[146] While true, illegal sanctions can be observed in today's international relations perpetually,[147] and

[142] P. Weil, p. 415.
[143] J. Fawcett. The legal character of International agreements. — British Yearbook of International Law 1953/30, pp. 381-400; K.C. Wellens, G.M. Borchardt. Soft law in European Community law. — European Law Review 1989/14(5), pp. 267-321.
[144] J. Klabbers, p. 37.
[145] S. Chesterman, D. M. Malone, S. Villalpando, A. Ivanovic, p. 31.
[146] J. Klabbers, p. 38.
[147] Violations of International law during the Annexation of Crimea include Article 2, paragraph 4 of the UN Charter; Helsinki Final Act 1975; Budapest Memorandum 1994.

which then, is a better means of a solution — a sanctioning system provided by law, or illegal retaliation? In addition to that, sanctions have proven to be a successful means of controlling the correct practicing of norms of law throughout history. Prosper Weil calls the international laws sanctions mechanisms of today literally inadequate,[148] and quite directly admits its shortcomings.

Soft law should be avoided whenever possible. Formalism could bring balance to the liberalizing global community of the 21st century, and hence should be preferred. With every development a certain amount of regression entails – to avoid that phenomena overgrowing and overpowering the international society, and international law, certain boundaries would be of benefit – limits that cannot be crossed without certain consequences. To keep evolution in qualitative process, a certain sense of order is necessary. As commonly understood, illustratively — to grow a bed of roses one needs to root out the weeds. Even though some researchers claim that the more parties there are to a treaty the better[149], I am not convinced quantity over quality is the answer.

[148] P. Weil, p. 414.
[149] J. L. Brierly, p. 4.

ABBREVATIONS

CAHDI - Council of the European Union Working Party on International Public Law

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

COJUR – Working party on public international law

ICJ – International Court of Justice

ILC – International Law Commission

UAE – United Arab Emirates

UN – United Nations

UNESCO – United Nations Educational, Scientific and Cultural Organization

VCLT – Vienna Convention on the Law of Treaties

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