

- Courseware (/courses/LouvainX/Louv2.01x/1T2014/courseware)
- Course Info (/courses/LouvainX/Louv2.01x/1T2014/info)
- Discussion (/courses/LouvainX/Louv2.01x/1T2014/discussion/forum)
- Wiki (/courses/LouvainX/Louv2.01x/1T2014/course_wiki)
- Progress (/courses/LouvainX/Louv2.01x/1T2014/progress)
- Reading Materials (/courses/LouvainX/Louv2.01x/1T2014/pdfbook/0/)
- Syllabus (/courses/LouvainX/Louv2.01x/1T2014/3517b9300b554b118f11224b8c05eb10/)

After the United States joined the International Covenant on Civil and Political Rights, attaching a number of (rather wide-ranging) reservations to their instrument of accession (see earlier in this section), the Human Rights Committee launched its work on what became General Comment No. 24 on the issue of reservations to the ICCPR. This work was completed in 1994. In *General Comment No. 24*, the Committee addressed, *inter alia*, the following questions:

1. Which reservations are acceptable, i.e., compatible with the object and purpose of the Covenant?

The Committee's answer is expressed in paragraph 8: "Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve *inter se* application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and *a fortiori* when they have the character of peremptory norms) may not be the subject of reservations."

2. Who is to determine whether a particular reservation is acceptable? Should this be left to the States parties, acting through the classic logic of objections, or should this be a task of the Human Rights Committee?

The Committee clearly states that only the latter solution is workable: "It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because, ... it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions. In order to know the scope of its duty to examine a State's compliance under article 40 or a communication under the first Optional Protocol, the Committee has necessarily to take a view on the compatibility of a reservation with the object and purpose of the Covenant and with general international law. Because of the special character of a human rights treaty, the compatibility of a reservation with the object and purpose of the Covenant must be established objectively, by reference to legal principles, and the Committee is particularly well placed to perform this task" (Human Rights Committee, General Comment No. 24, *Issues Relating to Reservations made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, 4 November 1994, para. 18).


3. What are the consequences of a particular reservation being found invalid, i.e., in violation of the object and purpose of the ICCPR?

The Committee responds in para. 18 of its General Comment: "The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation".

Consider now the following questions:

A. Is the Human Rights Committee correct to assert that a State may not join the ICCPR while including a reservation concerning a right that is part of *jus cogens* or is recognized as part of customary international law? The Committee provides the following examples: "... a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And while reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would not be."

☐ Yes, it is correct.

☒ No, it is not. 

EXPLANATION

In fact, by including a reservation concerning any of these provisions, a State of course would not be exempting itself from having to comply with them. That obligation remains, whether or not a reservation is made in the context of the ICCPR, and indeed, whether or not a State becomes a party to the ICCPR at all: that is precisely the implication of a norm being part of international custom. Therefore, though entirely understandable given the wish of the Human Rights Committee to preserve the integrity of the ICCPR, this argument is not convincing.

In 2011, the International Law Commission noted that "the fact that a treaty provision reflects a rule of customary international law does not in itself constitute an obstacle to the formulation of a reservation to that provision", though it also remarked "A State or an international organization may not formulate a reservation to a treaty provision concerning rights from which no derogation is permissible under any circumstances, unless the reservation in question is compatible with the essential rights and obligations arising out of that treaty. In assessing that compatibility, account shall be taken of the importance which the parties have conferred upon the rights at issue by making them non-derogable" (*Guide to Practice on Reservations to Treaties*, adopted at the 63rd session of the ILC (2011), paras. 3.1.5.3 and 3.1.5.4 respectively). It is difficult to see the logic of treating separately the two, in this context: a State making a reservation to a *jus cogens* rule, from which no derogation is possible, simply expresses its choice not to accept a particular form of supervision of compliance with this rule, and this does not imply -- nor could it imply -- that it intends to circumvent the rule in question. Indeed, this is stated explicitly by the ILC itself in its *Guide to Practice on Reservations to Treaties*:

4.4.2 Absence of effect on rights and obligations under customary international law

A reservation to a treaty provision which reflects a rule of customary international law does not of itself affect the rights and obligations under that rule, which shall continue to apply as such between the reserving State or organization and other States or international organizations which are bound by that rule.

4.4.3 Absence of effect on a peremptory norm of general international law (*jus cogens*)

1. A reservation to a treaty provision which reflects a peremptory norm of general international law (*jus cogens*) does not affect the binding nature of that norm, which shall continue to apply as such between the reserving State or organization and other States or international organizations.

2. A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.

B. The Committee considers that it is its role to assess the compatibility of the reservation that a State attaches to its accession to the ICCPR. Why would the classic mechanism of objections not be effective in ensuring that such an assessment is made?

- ☒ Because the interests protected by human rights treaties are not those of the states, but those of individuals within States ✓
- ☐ Because too many States might object, leading to the treaty not entering into force with respect to most States

EXPLANATION

The Committee's view is that States cannot be trusted to monitor each other's behavior in the area of human rights: they might be tempted to refrain from interfering with each other's sovereign choices in this area, because (and that it was is specific to human rights treaties) compliance is not in their mutual interest, but in the interest of the people under their jurisdictions. The point is made forcefully in an article authored by Rosalyn Higgins, at the time the member of the Human Rights Committee who took the leading role in drafting the General Comment, and published a few years earlier (R. Higgins, 'Human Rights: Some Questions of Integrity' (mistakenly titled 'The United Nations: Still a Force for Peace' due to an editorial error), *Modern Law Review*, 52, No. 1 (1989)).

C. Is the implication of the position of the Committee that the objections by States parties to the Covenant are irrelevant to the determination of the question of the acceptability of the reservation?

- ☐ Yes, objections from states would not affect the objective assessment by the Committee of the validity of the reservation.
- ☒ No, although the lack of objections by other states is not decisive, *if* objections *are* expressed, they express the opinions of State parties as to the validity of the reservation, which the Committee may take into account. ✓

EXPLANATION

If and when they are expressed, States' objections to a particular reservation made by a State joining the ICCPR may still be significant: they express the state of international consensus as regards the object and purpose of the Covenant, and whether or not the reservation complies with them. However, in the view of the Committee, such objections are not decisive: it remains the Committee, ultimately, that shall have the final responsibility for determining the compatibility of the reservation with the requirements of the Covenant.

Check

Hide Answer(s)



About (<https://www.edx.org/about-us>) Jobs (<https://www.edx.org/jobs>)
Press (<https://www.edx.org/press>) FAQ (<https://www.edx.org/student-faq>)
Contact (<https://www.edx.org/contact>)



EdX is a non-profit created by founding partners Harvard and MIT whose mission is to bring the best of higher education to students of all ages anywhere in the world, wherever there is Internet access. EdX's free online MOOCs are interactive and subjects include computer science, public health, and artificial intelligence.



(<http://www.meetup.com/edX-Global-Community/>)



(<http://www.facebook.com/EdxOnline>)



(<https://twitter.com/edXOnline>)



(<https://plus.google.com/108235383044095082735/posts>)



(<http://youtube.com/user/edxonline>)

© 2014 edX, some rights reserved.

Terms of Service and Honor Code -
Privacy Policy (<https://www.edx.org/edx-privacy-policy>)