

**INTERNATIONAL HUMAN RIGHTS**  
**LouvainX online course [Louv2.01x] - prof. Olivier De Schutter**

**READING MATERIAL**

**related to: section 1, sub-section 4, unit 3: Law of reservations**

**Inter-American Court of Human Rights, Advisory Opinion OC-2/82 of 24 September 1982 on the effect of reservations on the entry into force of the American Convention on Human Rights (Arts. 74 and 75), Series A, No. 2:**

29. ... modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction ...

31. These views about the distinct character of humanitarian treaties and the consequences to be drawn therefrom apply with even greater force to the American Convention whose first two preambular paragraphs read as follows:

‘Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.’

32. It must be emphasized also that the Convention, unlike other international human rights treaties, including the European Convention, confers on private parties the right to file a petition with the Commission against any State as soon as it has ratified the Convention. (Convention, Art. 44.) By contrast, before one State may institute proceedings against another State, each of them must have accepted the Commission’s jurisdiction to deal with inter-State communications. (Convention, Art. 45.) This structure indicates the overriding importance the Convention attaches to the commitments of the States Parties vis-à-vis individuals, which can be readily implemented without the intervention of any other State.

33. Viewed in this light and considering that the Convention was designed to protect the basic rights of individual human beings irrespective of their nationality, against States of their own nationality or any other State Party, the Convention must be seen for what in reality it is: a multilateral legal instrument of framework enabling States to make binding unilateral commitments not to violate the human rights of individuals within their jurisdiction.

34. In this context, it would be manifestly unreasonable to conclude that the reference in Article

75 to the Vienna Convention compels the application of the legal regime established by Article 20(4), which makes the entry into force of a ratification with a reservation dependent upon its acceptance by another State. A treaty which attaches such great importance to the protection of the individual that it makes the right of individual petition mandatory as of the moment of ratification, can hardly be deemed to have intended to delay the treaty's entry into force until at least one other State is prepared to accept the reserving State as a party. Given the institutional and normative framework of the Convention, no useful purpose would be served by such a delay.

35. Accordingly, for the purpose of the present analysis, the reference in Article 75 to the Vienna Convention makes sense only if it is understood as an express authorization designed to enable States to make whatever reservations they deem appropriate, provided the reservations are not incompatible with the object and purpose of the treaty. As such, they can be said to be governed by Article 20(1) of the Vienna Convention and, consequently, do not require acceptance by any other State Party.