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RESEARCH PAPER

Establishing State Responsibility for the Breach of Human Rights and Possible Remedies

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ABSTRACT

This work attempts to study the evolving nature of state responsibility in the context of international human rights law focusing on the invalidity of reservations that hinder access to international justice. The study is limited to core UN human rights treaties and relevant enforcement mechanisms. International law in the past prioritized state-to-state obligations; nonetheless, modern human rights instruments have allowed individuals to seek redress for violations. Despite ratification, many states undermine treaty effectiveness through recourse to reservations. The study reviews international legal texts, treaty commentaries, and relevant jurisprudence using qualitative approach. The findings indicate that invalid reservations conflict with treaty purposes and hinder enforcement. States continue to escape obligations, however, this may result in international pressure such as sanctions, incentives, and public condemnation to compel compliance. It is suggested that international bodies must oblige states to act in line with commitments they have made by signing human rights treaties.

Keywords: Reservations, Access to International Justice, Human Rights, State Sovereignty

Introduction

International Human Rights Law not only offers rights embodied in a series of Conventions/Covenants but also provides adequate tools, means and mechanisms to realize those rights. Amongst them some are binding in nature such as the procedure requiring states to report and some are mere Optional, for instance, right of individuals to file communications to respective human rights treaty bodies. Unfortunately, due to its optional nature and consequently non adoption of it or reservations on the relevant provisions/ Articles/ Protocols of the Conventions; individuals are restricted to access international justice. This work is an attempt to highlight that these reservations are not valid and go against the object and purposes of respective treaties.

Literature Review

State responsibility in the area of human rights law has changed immensely, both in principle and in practice. The classical systems of international law basically applied only to the relationships between states, in which the individual had no standing or recourse to justice at the international level. But the cumulative codification of the norms of human rights since the Second World War greatly changed the situation, so that individuals can nowadays seek recourse for violations by their own states under the various international treaties. Boerefijn (2009) provides the much needed legal foundation to the enforcement of state responsibility under UN human rights treaties. With the description of ways as to how accountability can be pursued along with the increasing powers of the monitoring regimes of the treaties and the

tools of interpretation. This work most forcefully makes the point that while the regime of the treaties offers a normative standard, effectiveness is more dependent upon the actual state cooperation. Goodman (2002) offers a subtle discussion of the effect of void reservations in law, arguing that state consent to the human rights treaties must not be used as a pretext to weak the substance of the commitments. The incompatible reservations with the object and purpose of the treaty must be treated as void, thereby allowing the full operation of the treaty stipulations, including the ones subject to the reservation. This line of argument follows the UN Human Rights Committee's General Comment No. 24 (1994), categorically stating such reservations as unacceptable, especially those intended to dilute the enforcement assurances. Jonas and Saunders (2010) go a step further in elaborating interpretive modes of examining treaty reservations, distinguishing between the textual, object-purpose, and subsequent practice methods. The paper emphasizes that the fact that state practice always defers in permitting substantial scrutiny globally, thereby the necessity of adopting a more strict interpretative methodology for the benefit of honoring the integrity of human rights undertakings. The Vienna Convention on the Law of Treaties of 1969 has frequently been cited as the 'original' legal text governing the admissibility of reservations. Article 19 of the VCLT sets the standard of reference: a reservation must not be incompatible with the object and purpose of the treaty. Klabbers (2002) confirms the doctrinal line, arguing that the VCLT not only limits the degree of admissible reservations, but also affirms the effectiveness and cohesion of the regime of the treaty.

Alongside texts of laws and commentaries, institutional and international responses to noncompliance have also attracted research attention. Alston (1999) refers to the European Union as providing for compliance through the application of economic incentives and diplomatic pressure, while Lebovic and Voeten (2009) refer to how international institutions employ the use of foreign aid and public censure as tools of pressuring states to reach human rights obligations. These demonstrate how state behavior is conditioned not only through the application of legal norms, but through reputational and economic variables of the international system as well.

While literature mostly considers the substantive aspects of realization of human rights through various international mechanisms; the legal doctrines of state responsibility for human rights are extremely under-developed and its application continues to be erratic due to state reluctance and the absence of actual application of international coercive measures.

Material and Methods

By focusing on the legal ramifications of state reservations to human rights treaties, this work uses a qualitative doctrinal approach to investigate how the idea of state responsibility has evolved within the field of IHRL. The study is mostly normative and analytical, with an emphasis on how concerns impede the pursuit of justice and impact the implementation of human rights commitments. The study critically examines key sources of international law, such as fundamental human rights agreements like the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, and the International Covenant on Civil and Political Rights. A major component of the legal analysis consists of pertinent General Comments and concluding observations of treaty-monitoring authorities, as well as rulings from international courts and tribunals (such as the International Court of Justice, European Court of Human Rights, and Human Rights Committee decisions). The adopted approach provides suggestions for bolstering human rights enforcement against resistance through reservations and backs a critique of current legal norms.

The Concept of State Responsibility and Obligations

The concept of state responsibility and its obligations has been evolving since decades. Under the present norms states can be held liable for several issues. Codification

of International Humanitarian Law in the form of Hague Conventions, 1907 and Geneva Conventions, 1949, creation of the International Criminal Court are some key events in that direction (Boerefijn, 2009). After the UN started legislating over human rights, the whole horizon took a dramatic change.

Earlier it was only states which could claim rights against other states and demand certain obligations or duties towards that end, but now, not only states but individuals are also given the option to bring their own states to answer for any violation of the human rights secured to them through international legislation.

International law sets standards to be followed by those states adhering to the respective *legal instruments* that they must behave with their subjects in a certain way. That, certain rights must be ensured by states in respect of their subjects and where the states violate their responsibilities, international human rights law gives individuals opportunity to approach an international body i.e., Human Rights Committees such as Committee formed & established under International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966, Convention against Torture and other Inhuman or Degrading Treatment or Punishment, 1984, Convention on the Elimination of Discrimination against women, 1979, etc., which are composed of neutral and highly skilled jurists of International Law for the determination of their matter.

It is therefore asserted that "access of individuals to justice at the international level, […] a concrete expression has been given to the recognition that human rights to be protected are inherent to the human person and do not derive from the state" (Trindade, 2012)

The present structure of human rights law in almost all the core human rights treaties have explicitly enjoined obligations and responsibilities over party states. Some instances are as follows:

Obligations under International Covenant on Civil and Political Rights (ICCPR), 1966

Article 2 of International Covenant on Civil and Political Rights states that:

"1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each state party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

a. to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b. to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

c. to ensure that the competent authorities shall enforce such remedies."

Obligations under International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 and Its Optional Protocol, 2008

In the same way, the ICESCR puts following obligations upon party states:

"1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." (ICESCR, 1966, art. 2)

Later, Optional Protocol to ICESCR was adopted by the UNGA on December 10, 2008, and an Individual Complaint Mechanism (ICM) was provided under it. Preamble of the Optional Protocol to ICESCR designates ICM as a means to "achieve the purposes of this Covenant" and for that it incorporates the procedure to access the Committee established under the Covenant, in Article 1 of the Optional Protocol to ICESCR.

Obligations under the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)

Article 2 of the Convention casts following obligations upon member states:

- States undertake to incorporate the principles of the equality of males and females in their respective national grund norms or other appropriate legislation.
- States must adopt appropriate legislative and other measures, including sanctions where appropriate.
- States must establish adequate local tribunals and other public institutions to provide effective protection to women under this Convention.
- That they will avoid from any act or practice amounting to discrimination against women.
- That they will take all adequate measures including legislation, modifications or abolishing existing laws which constitute discrimination.

Obligations under Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (UNCAT)

Article 2 of Convention against Torture states:

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"

Other human rights instruments closely follow the same pattern and put responsibilities upon states parties to fulfil their commitments and to provide all means through which their subjects can exercise their rights as enshrined under the treaties including inter-alia to provide them with *effective remedy* where their rights get violated.

A situation may arise where a state may not fulfil its obligations. It is not rare to observe states bypassing their responsibilities under the treaties even though they are parties to a these treaties. The states often reserve the relevant provisions which they find hard to act upon. Sometimes states do not adopt Optional Protocols to the treaties which provide for the mechanisms for the enforcement of treaty provisions and realization of rights. As per the experiences of the Human Rights Committee, "the states do not always respect their obligations" (UN Human Rights Committee, 2008). One of the main reasons behind this situation is that states recourse to reservations to block access to the mechanisms devised to implement the provisions of respective treaties. Nonetheless, such recourse has consistently been contested at the international horizon and such reservations invalid.

Status of Invalid Reservations restricting obligations of party states

As to reservations, the Vienna Convention on the Law of Treaties, 1969 (VCLT), allows a state to declare or reserve any provision or set of provisions while adhering to it through sign or ratification but along the way also provides that the reservations or declarations must be within the purview of the relevant treaty and must not be against the object and purpose of the treaty (Klabbers, 2002). Therefore, where any declaration or reservation has been made which is against the objects and purposes of the treaty, or which goes against the spirit of the treaty, VCLT, does not recognize it (VCLT, 1969).

Article 19 of VCLT states:

"A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty;

(b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty."

International Jurisprudence on Reservations

There are three comments normally forwarded by different commentators of international law regarding an invalid reservation or declaration. These are following:

a) That the state shall not be bound in respect of that Article or Provision reserved but it shall respect and comply with the rest of the treaty.

b) That the state by act of reservation (which is inconsistent with the object and purposes of the treaty) has rendered whole of the treaty inapplicable thereby ceased to be a party to that treaty anymore.

c) That the invalid reservation does not affect either the treaty or the provision itself, thereby making the whole of the treaty applicable including the reserved Article or provision. Majority of the jurists have gone for the third option (Goodman, 2002). Thus, reserving provisions in the principal treaties or their attached protocols is consequently

the obligations, and the responsibilities of the states subsist (UN Human Rights Committee, 1994).

International community has also declared reservations over human rights treaties highly unfitting (Jonas & Saunders, 2010). Vienna Declaration and Programme of Action affirmed plainly that "all the States are encouraged to accede to the international human rights instruments and all the States are encouraged to avoid, as far as possible, the resort to reservation." (United Nations, 1993)

In its General Comment number 24, the Committee under ICCPR at paragraph 11 states that "[t]he Covenant consists not just of the specified rights, but of important supportive guarantees. These guarantees provide the necessary framework for securing the rights in the Covenant and are thus essential to its object and purpose. Some Operate at the national level and some at the international level. Reservations designed to remove these guarantees are thus not acceptable." (UN Human Rights Committee, 1994) It also urged the states to "accept the full range of obligations because the human rights norms are the legal expression of the essential rights that every person is entitled to as a human being." (UN Human Rights Committee, 1994, Para 4)

The Office of the UN High Commissioner on Human Rights categorically stated that by being party to the human rights covenant the states assume their responsibility and obligation to respect, protect and fulfil human rights by taking all the possible measures at national level for instance making rules, laws and regulations, taking all the judicial or executive steps for the protection and safeguard of rights. Where the states have not taken any steps in pursuance of this obligation, the mechanisms and procedures available at international level such as individual petitions and communications are there to ensure that the human rights standards are protected, implemented and enforced at national level (Office of the United Nations High Commissioner for Human Rights).

As per this construal of Office of the UN High Commissioner for Human Rights, where the states do not take appropriate steps particularly legislative to realize their obligations under Human Rights Covenants, they should at least grant their subjects the right to petition i.e. individual complaint so that the Committees could entertain the petitions and play their adequate role according to the respective treaty.

This leads to a question that what should be done to make states realize their responsibilities and obligations towards adopting and acknowledging the fact that invalid reservations are no reservations, these are not only against the emerging consensus of international legal community but also hamper the implementation of human rights guarantees at the national levels. In this regard, there are various options through which states may be reminded of their treaty obligations for instance through International condemnations or imposing of sanctions in the name of bad human rights records and practices so that the states could be pressurized to mend their ways.

Element of International Condemnation

International condemnation of the states with poor human rights record could make states review their policies. There were occasions where international law even allowed intervention in those states which were violating human rights massively and systematically. (Tandon & Kapoor, 2010, p. 223) With the inception of the contemporary era of human rights and its law, various changes have been seen inducing respect to human rights treaties. For instance, the United Nations has espoused and employed several measures to make states respect and fulfil their human rights obligations, such as *procedure 1235* of public condemnation. These measures at recognized international forums on passing or adopting resolutions regarding human rights situations at international conferences, seminars and meetings may build pressure over states and

become driving force for the states to take positive steps for the protection of human rights and fundamental freedoms.

Similarly, organizations of international repute respecting human rights like Human Rights Watch or Amnesty International, play a pivotal role for the protection of human rights by conducting exhaustive inquiries and investigations figuring out the state of violation in different countries across the globe. They also recommend initiatives for the governments to take up for fulfilling their domestic and international obligations and responsibilities originating from both national and international law regimes. Their reports are highly relied upon by the UN and its agencies.

Sanctions "As Means" To Induce Respect for Human Rights Obligations

Another trend which has emerged as powerful tool for inducing enforcement of human rights is imposition of sanctions (Lebovic & Voeten, 2009). International sanctions are powerful international tools which are employed by either International Organizations (like the UN), powerful countries (like USA and UK), or powerful groups of Countries (like European Union) for obtaining desired results. International sanctions are of different types such as:

- Financial
- Political
- Military
- Humanitarian

Most of these sanctions are in essence politically motivated but the UN has now frequently recourse to put sanctions for obtaining compliance with human rights treaty regimes. For instance, the UNSC sanction against Iraq in the wake of its attack on Kuwait in 1990 (Baek, 2008). A glaring example of the sanction is the US-Sanction upon South-Africa on account of its apartheid practices (Baek, 2008, p. 50). Discrimination on account of colour or race is a human rights violation and therefore the US imposed economic sanctions on South Africa so that it could mend its ways and end this evil practice through taking necessary steps.

European Union Steps for Inducing Respect for Human Rights

European Union is also following the same path rather with more vigour and productivity. Apart from introducing economic sanctions European Union (EU) also offers inducements of various nature to oblige respect for international and regional human rights treaty regimes (Alston, 1999).

For instance, EU has linked the benefits of duty free trade across the European Countries (for the developing countries) with their signing and ratifying the respective human rights covenants and conventions. Those who wish to acquire Generalized System of Preferences (GSP) PLUS, status must also do the same.

- **Pakistan Granted Generalized System of Preference (PLUS) Status**

Pakistan was granted Generalized System of Preference (GSP) status by EU on its ratifying the UNCAT and withdrawing most of its declarations and reservations from ICCPR and UNCAT respectively. GSP Plus status as stated hereinabove is a scheme of concessions on tariffs on the exports of a country to European Union States.

According to Daily Dawn (Haider, 2015) EU has linked the granting of this status with strict compliance to 27 human rights treaties, both UN and Regional.

According to a report published by Lahore Chamber of Commerce and Industry (LCCI) (Ministry of Commerce, 2015) these 27 Conventions could be categorized as follows:

- Eight of the conventions relates to environment.
- Eight relate with the rights of Labours and their conditions.
- Seven are Human Rights Conventions (mostly by the UN).
- Three are narcotics related Conventions
- And one Convention deals with the menace of Corruption.

European Union is also discussing the issue of capital punishment with the government officials (European External Action Service, 2015).

These economic inducements and in other cases sanctions play an important role for obtaining state's respect for human rights treaties. International Organizations and forums must also insist, in addition to stressing and insisting upon ratifications of human rights instruments, that states must give their individuals access to those means and procedures which are important for the realization of rights under various human rights covenants and conventions without resorting to reservations or declarations of any kind.

International Financial institutions like the World Bank also considers human rights situations in a country before granting loan or entering into any economic engagement (Gauri & Gloppen, 2012). Multinational companies and investors do not invest in a country with poor human rights records.

All these things and other measures like non-investment, blocking of aids and donations, cessation of international trade and sanctions are very powerful incentives and tools to secure the compliance with states human rights responsibilities.

Perhaps this is high time for the states to realize that the concept of sovereignty has changed. International human rights law has taken deep roots into the domestic activities of the states; countries follow international legal order as well as customary international practices. As the countries are getting more interdependent in this global age the common driving factor of relationship between civilized nations is human rights. (Hathaway, 2002)

States should acknowledge that the moment they ratify any human rights instrument, they assume obligations and responsibilities and become bound by the requirements of the treaty. They consent to take all fitting steps for the actualization of rights enshrined under the instruments and ensure to offer *effective remedies* in situations where the provisions got violated and not to create any obstacle in the enjoyment of the rights they have signed and ratified with full consent.

Conclusion

The evolution and progress of international law pertaining to human rights law has deeply redefined the concept and limits of state sovereignty by inculcating within it an obligation and responsibility to respect, protect, and fulfil the rights incorporated in international treaties. This paper has demonstrated that while states may ratify key human rights instruments, their reliance on reservations, non-ratification of optional protocols, and failure to provide effective remedies to individuals often undermines the very object and purpose of these treaties. The Vienna Convention on the Law of Treaties

and international jurisprudence in this regard strengthens the principle that reservations incompatible with a treaty's objectives are invalid and do not absolve states from their responsibilities.

The increasing acknowledgment of individual access to international justice in the shape of right to file petitions or communications, reporting procedures, appointment of special rapporteurs etc., represents a pivotal shift in human rights enforcement and is integral to the realization of human rights. Besides, external tools such as international condemnation and sanctions and sometimes economic incentives like the EU's GSP Plus status clearly illustrate that the international community values the respect and promotion of human rights guarantees across the globe.

However, the true acknowledgement of international human rights law is based on the willingness of states to internalize these obligations and move beyond formal ratification towards substantive implementation. The modern era requires states to acknowledge that sovereignty is not a shield against accountability but a vehicle for the protection of human dignity. Upholding treaty commitments, recognizing the invalidity of obstructive reservations, and enabling access to international justice are not optional gestures rather they are binding imperatives in a global legal order built on shared human values.

Recommendations

Based on an in-depth review of human rights treaties, international court decisions, and enforcement practices, the following recommendations are proposed to help hold states more accountable and ensure that individuals have real, effective access to justice at the international level:

Treaty regimes at the international level need to set and enforce a common standard in the determination of the admissibility of reservations under Article 19 of the Vienna Convention on the Law of Treaties (VCLT). In agreement with the prevailing opinion among lawyers and treaty-monitoring bodies, the invalid reservations should be denied the effect of suspending or derogating state obligations under the treaty. The treaty bodies should make it clear that invalid reservations are void ab initio and that the states are bound by the entire extent of the corresponding treaty provisions. The stance should be reaffirmed not only in the general comments but also in the decisions regarding individual communications, concluding observations, and state dialogue.

Besides, the UN and other international actors must insist that states formally withdraw reservations incompatible with the objects and purposes of the treaties. They can do so through processes of Universal Periodic Review, special diplomatic efforts, and the recommendations of the treaty bodies. In appropriate cases, the withdrawal of such sort should be made a condition of full participation in the international processes or benefits attached to the ratification of a treaty. In addition, the optional nature of enforcement guarantees in the shape of Optional Protocols should be amended and made obligatory. Moreover, in extending the European Union model of conditional trade preferences (e.g., GSP Plus), international and regional institutions should link economic benefits, aid packages, and development aid to significant human rights compliance. This would involve not only ratification of treaties but also withdrawal of reservations and measurable implementation of treaty obligations at the national level.

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