

The Impact of National and Legal Motives on Saudi Arabia's Reservations about International Treaties

Mohammed Yahya S Alaza, Prof. Dr. Badlihasham Bin Mohd Nasir, Dr. Kawthar Abdalla Bayoumi

Academy of Islamic Civilization, Faculty of Social Sciences and Humanities, UTM. Malaysia.

Email: adalh.law1@gmail.com, badlihasham@utm.my, amkawthar@utm.my

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Abstract

Reservations about international treaties are one of the topics that are still subject to research and criticism among legal scholars, as they are directly related to the law of international treaties and are one of the most important sources of basic international law. This study aims to examine the impact of national and legal motives on Saudi Arabia's reservations about international treaties. This study adopts the mixed approach that consists of descriptive analytical and comparative approach, which is based on analyzing the content of legal theories and international treaties while making a comparison between the reservation on international treaties in its personal nature. The comparative approach is one of the methods of scientific research that aim at making an objective comparison between two phenomena in two different places, so that what others have reached can be viewed while adapting that to suit local conditions. The problem of the study is based mainly on the idea of reconciling the importance of the system of reservations to treaties for states according to their own reasons, on the one hand, and the necessity of preserving the unity and integrity of international treaties and not violating their subject and purpose, on the other hand, in order to reach the largest possible number of states participating in the treaties, in particular Legitimization, which includes the creation of international legal rules at the international level. The study reached several results, the most important of which is that there is a need to study public international law and its relationship to the elements of Country and its direct and integrated impact on the sovereignty of Country and the degree to which these Countries maintain their national and social elements.

Keywords: International Law, Islamic Sharia, Saudi Arabia, Reservations.

Introduction

International treaties represent the basic structure of international relations. The international community is like a family that is linked by interests, social and political

exchanges, and economic benefits between countries and some of them. However, the difference in social concepts and ideological aspects from one country to another has created different methods of understanding and commitment in the international community and between countries and some of them. One of the most important of these frameworks is To ensure the compatibility of the international community with the method and method of reservations to international treaties, which is one of the topics that are still subject to research and criticism among legal scholars and the tools for its implementation, as reservations are directly related to the law of international treaties, and it is one of the most important sources of basic international law (El-Shazly, 2016).

As this chapter deals with the legal motives of the Kingdom of Saudi Arabia on some of the provisions of international treaties, the research had to deal with the internal laws and the legislative and legal foundations of the Kingdom on which its foreign policies and treaties with the international community will be built in terms of compatibility, approval or reservation on some or some of its provisions. Searching for the philosophy adopted by the Kingdom on these reservations, due to the characteristics and characteristics that the Kingdom of Saudi Arabia unique that distinguish it from the rest of the countries (Khalifa, 2018).

The Problem of the Study

This study deals with an accurate and clear definition of many issues related to the system of reservations about international treaties. It is noted that most of the researches that discussed the subject of reservations about treaties in the past were either comparative between international law and Islamic sharia without paying sufficient attention to reservations in the context of international law, or they focused specifically on certain treaties in some Arab and Western countries, without addressing the Saudi legal system and its reservations related to international treaties. In addition, there is some research that did not follow ongoing developments in the concept of reservations to international treaties, and did not address recent works and research that relate to this topic (Al-Hajj, 2001).

Examples include the Kingdom's reservations about the "International Convention on the Elimination of All Forms of Racial Discrimination" concluded in 1965, and the Kingdom of Saudi Arabia's reservations to the "Convention on the Elimination of All Forms of Racial Discrimination against Women" concluded in 1979. The articles included in the previous agreement that are understood to be in violation of Islamic sharia, including Article Five, "The obligation to change cultural patterns and customs," Article Ten, "Encouraging co-education," Article Sixteen, "Women's guardianship and guardianship over women," and the Queen's general reservation to the "Convention on the Rights of the Child," concluded in 1989 in terms of its content and materials that contradict Sharia law; Including Article One, "Age of the Child," Article Twenty, Article Twenty-Seven, "Guardianship and Custody of the Child," Article Twenty-One, "Adoption," and Article Thirty-Seven, "Punishment of the Child." The legal document reviews the Kingdom's general reservation to this agreement. The problem of reservations about human rights treaties also arises in the large number and breadth of reservations expressed by states, especially those of a general nature that may lead to obstructing the purpose of the treaty that is hoped to be achieved by concluding such treaties (Al-Moussa, 2020).

The problem of the study is based mainly on the idea of reconciling the importance of the system of reservations to treaties for states according to their own reasons, on the one hand, and the necessity of preserving the unity and integrity of international treaties and not violating their subject and purpose, on the other hand, in order to reach the largest possible

number of states participating in the treaties, in particular Legitimization, which includes the creation of international legal rules at the international level.

The Objectives of the Study

1. Examine impact of national and legal motives on Saudi Arabia's reservations about international treaties.
2. Identify the legal and Sharia principles that the Kingdom follows in its reservations.

The Questions of the Study

1. What is the impact of national and legal motives on Saudi Arabia's reservations about international treaties.
2. What are the legal and Sharia principles that the Kingdom follows in its reservations.

The importance of the Study

The Islamic Sharia that the Islamic religion came with, and on which the constitution and law in the Kingdom of Saudi Arabia is based, is considered a comprehensive approach that regulates the lives of people at all times and places, and in various issues and affairs in terms of regulating the human relationship with the Creator, the Most High, the human relationship with himself, and his relationship with others, and the relationship of individuals with each other, and their relationship with the Country and the system of government and the international community, as it regulates the relationship of the Country with other Countries in conditions of peace and war, in the true Islamic legislation there are many laws that each one of them deals with an aspect of life, and among the laws for which we prepared this research Related to domestic law in the Kingdom of Saudi Arabia.

The internal system in the Kingdom of Saudi Arabia is based on Islamic law derived from the Noble Qur'an and the noble Sunnah of the Prophet, and the government announced its intention to codify the rules of Islamic law in the year (2010), and great progress has been made in publishing a reference book of legal principles and precedents on (2018), and to In addition to Islamic law, Saudi law relies on regulations issued by royal decrees and orders that cover a number of contemporary issues such as intellectual property and corporate law. Nevertheless, Islamic law remains the primary source of law, especially in areas such as criminal law, family law, trade and contract law. The Sunnah are the country's constitution.

The Basic Law of Governance is a system issued in 1412 AH, corresponding to 1992, during the reign of King Fahd bin Abdulaziz Al Saud, by Royal Decree No. A/90 dated 27/8/1412 AH, regarding the smooth way of ruling in the Kingdom of Saudi Arabia, like the constitution in other countries. A committee was formed headed by Prince Nayef bin Abdulaziz Al Saud to put in place the basic system of government.

Literature Review

Baya (2020) study entitled "Reservation of human rights treaties as a mechanism to protect the national public order, policy and law notebooks". The study aimed to identify reservations about human rights treaties as a mechanism to protect the national public order, and used the descriptive analytical approach. The study found a number of results, the most important are: International relations are subject to unstable relations, due to differences in the interests of countries changing from time to time, and despite the intertwining of these interests and the complexities that result from them at the international level, this does not prevent countries from concluding international or regional multilateral treaties. In addition,

it does not prevent it from having the right to reserve what it deems inappropriate on the other hand.

Fatima (2018) study aimed to identify the legal effects of the reservation and the relationship of the reserving state with the states parties to the treaty that accepted or rejected the reservation, and whether the reservation violates the purpose of the treaty, and to work to determine the legal system for reservations about international treaties. It clarified the nature of the reservation, the conditions for accepting and objecting it, cases that are unacceptable by nature, and the legal consequences resulting from them, and used the descriptive analytical approach. The study reached a number of results, the most important of which are that the reservation has positive aspects, including that reservations to international treaties allow for overcoming the obstacles facing the desire of states to which you are a party to the treaty, and the reservation has its drawbacks. It is affected when it relates to a collective treaty that has codified some of its general rules. Allowing reservations in this case may harm the integrity of the international treaty. The most important recommendations are: reducing the initial reservations on international treaties because they are steeped in the idea of integrating the unity of the treaty and studying reservations of Islamic countries in general and a study of their motives and causes.

Al-Azzawi (2014) study entitled Reservation to International Treaties in International Law and Islamic Jurisprudence. This study aimed to identify the legal effects of the reservation in the relationship of the reserving state with the states parties to the treaty that accepted or rejected the reservation, and to find out whether the reservation is contrary to the purpose of the treaty and its purpose, using the descriptive analytical approach. The study reached a number of results, the most important of which are: Determining the type of treaty contributes significantly to determining the procedures that must be followed regarding its conclusion. Also, each party to an international treaty has the right to make a reservation, but it must adhere to its conditions. Whether substantive or formal, the other parties have the right to accept or object to the reservation, and the reservation must clarify the right of the state wishing to join the treaties to do so at any time. At the end of the research, the study reached a recommendation according to which I indicated that Islamic countries in particular must express their reservations about any provision of international treaties that conflict with them.

Yassin (2010) study aimed to examine the extent of internationalization of sovereignty in the modern era, using the descriptive analytical approach. The study concluded that the trend towards reducing the role of national sovereignty within the scope of mutual international relations will continue and increase, at least during the foreseeable future. This is due to the fact that many of the developments mentioned above are still effective and influential in shaping the structure of the international system in its current state.

Methodology

This study adopts the mixed approach that consists of descriptive analytical and comparative approach, which is based on analyzing the content of legal theories and international treaties while making a comparison between the reservation on international treaties in its personal nature. The comparative approach is one of the methods of scientific research that aim at making an objective comparison between two phenomena in two different places, so that what others have reached can be viewed while adapting that to suit local conditions.

To achieve the objectives of this study, this it relied on a design that combines the descriptive, analytical and comparative approach, which is characterized by describing and analyzing the

systemic motives of the Kingdom of Saudi Arabia in its reservations about international treaties and agreements, and analyzing some legal materials, by jurists in Islamic Sharia and international laws. The theoretical framework of the topic will be addressed in accordance with what is stipulated. It views the opinions of Islamic Sharia, and the most important books, studies, and specialized periodicals that dealt with the subject of this research to be sought in this regard through contemporary reality (Khalil, 2012).

In obtaining information related to the research topic, the researcher relied on the legal and social aspects, and therefore he will collect data from primary and secondary sources through personal interviews as a basic tool for the social aspect because it is an effective tool that can answer the questions raised about the research topic, and by analyzing legal texts in the legal aspect. As for the legal aspect, the analysis of legal texts will be in accordance with the methodology of analyzing laws (Yerkes, 2023).

Discussion

National Sovereignty and Reservations in the Kingdom

National sovereignty has been considered one of the basic foundations on which the edifice of contemporary international law is based, and its concept is considered one of the important concepts that legal scholars and policy researchers have paid attention to on an equal footing, since the French thinker Jean Bodin brought it, in 1576, in his six books on the Country. The idea of sovereignty has emerged in its various levels since the emergence of the first human societies, but it has known several developments throughout the different eras (Haddad, 2000).

- The International Court of Justice, in its decision related to the issue of the Corfu Strait (in 1949), defined national sovereignty as “the jurisdiction of the Country within the borders of its territory is unilateral and absolute, and that respect for regional sovereignty among independent Countries is an essential basis of the foundations of international relations.”⁽¹⁾.
- The Practice of sovereignty under contemporary international law.

Sovereignty Under the New International Law

Many of the developments of our time have come to challenge the credibility of the principle of Country sovereignty, and we are living today in a stage of comprehensive interdependence growth, because interest in the humanity pain and human rights usually stopped in the past at borders, so the private sphere of the Country shrinks as the obligations of a contractual nature expand or ethnic:

With the increase in international cooperation, it can be said that the private sphere of Countries is constantly shrinking whenever Countries engage in legally regulated relations with other persons in the international community, ..., and in this practice they do not, in fact, diminish their sovereignty as much as they express that sovereignty (Emad, 2006).

In her judgment outgoing on December 18, 1951 in the fisheries case, the International Court of Justice held that the authority to determine the territorial sea with regard to others stems from public international law, and in its judgment outgoing on January 27, 1952, regarding the rights and interests of the citizens of the United states of America in Morocco, it declared that The laws issued in Morocco in 1948 contradict the previous agreement law (Alwan, 2007).

(1) Corfu Channel, International Court of Justice, 1948, <https://www.icj-cij.org/en/case/1/judgments>

Examples of Saudi Arabia's reservations to international treaties

The Kingdom of Saudi Arabia signed the Geneva Conventions on May 18, 1963, Additional Protocol I (relating to the protection of victims of international armed conflicts) on August 21, 1987, and Additional Protocol II (protection of victims of non-international armed conflicts) on November 28, 2001. Moreover, it became Saudi Arabia a signatory to the Convention on the Rights of the Child on January 26, 1996, in addition to the Optional Protocol to the Convention on the Rights of the Child on June 10, 2011 (Tabbal, 2010).

The Kingdom of Saudi Arabia Reservation on the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)

With regard to women's rights in guardianship, guardianship, and lineage, there are many aspects of disagreement. The CEDAW agreement violated Islamic law, which prohibited adoption, (while CEDAW required equality between men and women in adoption). The agreement also recognized the right of the wife to choose her surname on an equal basis with the man, while Islamic law prohibits this, as it would prevent women from their rights in lineage and forfeit them (Yamen, 2023).

The Kingdom has reservations about Article (9/2), which stipulates that Country parties grant women an equal right to men's rights in the provisions of inheritance, and with regard to the nationality of their children, in accordance with the rules of Islamic legislation, and Article (15) regarding women's equality with men with regard to capacity, freedom of movement, travel, and choice of shelter due to its contradiction with Islamic law.

In order to reach the "Kingdom's Vision 2030", which focused on women and including them among its goals, by increasing the percentage of their participation in development and the labor market from (5%) to (28%), and an expected increase by (30%). Thus, the Saudi Country seeks to activate the role of women and empower them economically and reach It takes them to decision-making positions and grants them the freedom that enables them to contribute positively to the development of society, and to achieve justice and equality in the opportunities available to both genders, especially since women constitute half of society, as the statistics of the General Authority for Statistics (2017) indicated that Saudi women constitute almost half of society, and it became clear Through the distribution of the Saudi population - by gender - the percentage of males is (50.64%) and the percentage of females is (49.06%), and since Saudi women constitute half of Saudi society, their absence and lack of economic empowerment may affect the development of society, because their participation and empowerment is an important tool for raising development wheel (Donnelly & Myers, 2023)

The reservations of the Kingdom of Saudi Arabia to the Convention against Torture in 1984:

In 1984, in order to describe specific measures against torture, the United Nations Convention Against Torture introduced a definition of torture: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person with the intent of obtaining from that person, or from a third person, information or to confess, or to punish him for an act he or a third person has committed or is suspected of having committed, or to intimidate or coerce him or any third person - or when such pain or suffering is inflicted for any reason based on discrimination of any kind, or incitement or with the consent or acquiescence of a

public official or other person acting in an official capacity. It does not include pain or suffering arising solely from, inherent in, or incidental to legal penalties.⁽²⁾

The Convention against Torture defined in its first article by saying (for the purposes of this Convention, torture means any act that results in severe pain or suffering, whether physical or mental, intentionally inflicted on a person with the intent of obtaining from this person or from a third person information or a confession or punishing him for an act he committed or suspected of having committed, intimidated or coerced him or any third person, or when he or any third person has inflicted such pain or suffering for any reason based on, or at the instigation of, or with the acquiescence or acquiescence of, a public official or any person another in an official capacity and does not include pain or suffering arising solely from, inherent in, or incidental to lawful sanctions.⁽³⁾

The Kingdom of Saudi Arabia confirmed its accession to the Convention on September 23, 1997, with two reservations; The Kingdom does not recognize the mandate of the Committee stipulated in Article (20), and does not consider itself bound by paragraph (1) of Article (30), which refers to disputes between countries related to the interpretation or application of the Convention.

It is worth noting that such reservations are permitted according to Articles (28) and Paragraph (2) of Article (30), respectively.

It did not recognize the powers of the Committee Against Torture and made reservations about the method used to ensure the accuracy of the information provided by the Committee because it contradicts the principle of national sovereignty. It also made reservations about Article (30/1) as it did not commit itself to what was therein, which is the one that relates to any dispute arising between two Countries. One or more of the party Countries with regard to the interpretation or implementation of the treaty, and it cannot be settled by negotiation by submitting to arbitration at the request of one of these Countries, as it refused to transfer any dispute in this regard except with its consent.

The Kingdom's reservations to the 1989 Convention on the Rights of the Child:

This treaty was adopted and offered for signature, ratification and accession by virtue of United Nations General Assembly Resolution No. 25/44, dated 11/20/1989. and it entered into force ... and the Kingdom of Saudi Arabia joined it on February 25, 1996. with a general reservation on articles that contradict Islamic law without specifying those articles. The Convention is made up of a preamble and fifty-four articles. Consisting of three parts, it emphasized in its preamble the necessity of raising the child in a family environment. This Convention contains fifty-four articles dealing with the rights of the child that he must enjoy. It should be noted that the reservation made by the Kingdom regarding the Child Convention included Articles (1, 4, 51) of the Convention, and this reservation means that the provisions of these articles will not be valid against the Kingdom or the national laws and measures taken by the Kingdom.

Article No. (1); With regard to Article No. One of the Convention, which considers every person under the age of eighteen to be a child, only the Kingdom has reservations on this

(2) See the United Nations Convention against Torture

(3) See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in Resolution 46/39 of December 10, 1984, entry into force: June 26, 1987

article, as Saudi law does not, in some cases, consider persons under the age of eighteen as children.

Article No. (4); It is an article that stipulates the need for the Country parties to take all appropriate legislative, administrative and other measures to implement the rights recognized in this agreement, which is something that Saudi Arabia has reservations about as a result of the first reservation on Article No. One.

Article No. (51); It is an article that stipulates the inadmissibility of reservations on the rules prepared by the basic systems of the Convention that would impede the application of its other clauses, which is something the Kingdom of Saudi Arabia has expressed its reservations about.⁽⁴⁾

Saudi Arabia's efforts in child protection; In fact, since the Kingdom of Saudi Arabia agreed to the Convention on the Rights of the Child by joining, signing and ratifying, the government has worked hard to devote national efforts to protecting children and their basic rights in Saudi society, and among those rights are the following: Seek to protect the child from psychological and physical abuse.

The Kingdom reservation the International Covenant on Social and Cultural Rights:

The International Covenant on Economic, Social and Cultural Rights (1966) remains the core treaty on economic, social and cultural rights, and it recognizes the right to:

- Self-determination (Article 1).
- Equality between men and women (Article 3).
- Work and conditions conducive to it (Articles 6 and 7).
- Forming and joining trade unions (Article 8).
- Social security (Article 9).
- Protection of the family, mothers and children (Article 10).
- An adequate standard of living, which satisfies the needs for food, clothing and shelter (Article 11).
- Enjoy the highest possible standard of health and health care (Article 12).
- Education (Article 13).
- Primary education is free and compulsory (Article 14).
- participation in cultural life; benefit from the benefits of scientific progress; A person enjoys the protection of any scientific, literary or artistic work of his authorship (Article 15).

International Convention on Economic, Social and Cultural Rights 1966

The International Convention on Civil and Political Rights, which was issued in 1966, includes the civil and political rights of peoples and individuals, and establishes equality between men and women in enjoying the civil and political rights contained therein.⁽⁵⁾

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was issued in (2008); With the aim of realizing the purposes of the Charter (the Covenant) and implementing its provisions to enable the Human Rights Committee to receive and consider

(4) HRC International Report 2021", HRC, Retrieved 30/3/2022. Edited

(5) An offer for signature, ratification and accession was adopted by General Assembly Resolution (6500 / A) (D-24), dated 12/16/2008 AD, and the date of entry into force on 3/1/2009 AD, see the link: <http://www.2ohchr.org/arabic/law/indet.htm>

communications submitted by individuals who claim to be victims of a violation of any rights stipulated in the Covenant (Rishmawi & Quiroga, 2023).

These are the most important international agreements concluded in the recent period that intervened in the field of social rights, and clashed in some of their texts with the concepts and values established in Islamic countries. And if it happened that one of the countries violated the provisions of an agreement (it joined it, or even did not accede to it, as we explained with regard to Sharia agreements, with regard to some agreements, such as the Human Rights Convention, since all countries must respect them), then the committee supervising the implementation of the agreement raises the issue. The United Nations, which has the right to draw the attention of Countries to the violations, and it may take peaceful measures against them - represented by economic sanctions, taken by the United Nations organs, or even military deterrent sanctions, taken by the Security Council - to protect civilians in the country (Cowell, 2023).

Saudi Arabia and human rights

The world war, with all its calamities and destruction, was an important turning point in terms of human rights. Where it resulted in the consolidation of conviction; That there is a kind of correlation between respect for human rights and the protection of international peace and security, and thus the interest in the issue of human rights has shifted from the national to the international domain.⁽⁶⁾

The legal and Sharia principles that the Kingdom follows in its reservations:

The basic systems or laws in Saudi Arabia consist of five main systems or laws: The Basic Law of Governance, the Council of Ministers System, the Shura Council System, the Regions System, and the Allegiance Commission System.

The general regulations in Saudi Arabia, like other countries in the world, deal with the general laws in the constitution of the Kingdom of Saudi Arabia, regulating all sectors on which the Country's joints are based and controlling them in accordance with the Kingdom's policy, within the standards set by the system for each sector, for example:

- Media, culture and publishing laws.
- Internal security laws, civil status and criminal laws.
- Trade, economic and investment laws.
- Laws of etiquette, ceremonies and the diplomatic corps.
- Education and science laws.
- Hajj laws and Islamic affairs.
- Municipal services laws, planning and urban development.

Study Results

The research reached the following results:

- 1) The jurists, jurists and jurists of the Islamic Sharia have shown the permissibility of treaties, provided that they do not contradict detailed evidence, real and clear, as we have shown.
- 2) The work of Islamic law in the field of Islamic international relations achieves stability in the provisions of Islamic law and pride in this legal legislation.

⁽⁶⁾ Human rights and freedoms. Ali Muhammad al-Dabbas and Ali Abu Zaid: p. 51

- 3) The countries of the world are facing severe political crises and calamities, and some countries and governments are experiencing multiple types of conflicts.
- 4) The system of reservations to treaties enables the Country to exclude, restrict or modify the legal effect of a text or several texts in a treaty from applying to it.
- 5) Sovereignty is related in terms of its nature and the extent or narrow scope of its application to the capabilities of the Country and its own capabilities.

Conclusion and Recommendations

The researcher recommends adopting a number of recommendations that came as a result of the research

- 1) Promoting belonging to the Country and respecting its sovereignty by building sound and conscious citizenship and linking citizenship and loyalty to the state and its law and legitimacy.
- 2) Studying public international law and its relationship to the elements of Country and its direct and integrated impact on the sovereignty of Country and the degree to which these Countries maintain their national and social elements.
- 3) If the interests of Country party to a treaty require reservations to be made, those reservations must be at the stage of signature.
- 4) The research recommends focusing on providing the opportunity to empower women in the economic field and in all areas of work and production in society and fully supporting them to contribute to development while following up on caring for and caring for the family.
- 5) Abolition of the Law.

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