

# The Role of the Saudi Internal System in Shaping the Kingdom's Reservations about International Treaties

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## Abstract

Reservations are evident in almost all treaties in which the Kingdom of Saudi Arabia takes part. This study aims to examine the role of the Saudi internal system in shaping the Kingdom'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 this study lies in the fact that there is a shortage of research that directly addresses the role of the Saudi internal system in shaping the Kingdom's reservations about international treaties. The study reached several recommendations, the most important of which is that there is a need to clarify the Saudi negotiator's familiarity with all internal regulations and customs of the Kingdom before embarking on international negotiation processes. It also recommended that the Kingdom's shall assert its legislative identity in all international conferences and treaties.

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

## Introduction

The Islamic Sharia brought by the Islamic religion, and on which the constitution and law of the Kingdom of Saudi Arabia are based, is considered a comprehensive approach that regulates the lives of people in every time and place, and in various issues and affairs in terms of regulating the human relationship Allah, the Almighty, the human relationship with himself, and the relationship of individuals with each other, as well as the relationship of individuals with the state, the system of government, and the international community. Islamic sharia also regulates the relationship of the Muslim state with other states in conditions of peace and war. In Islamic legislation, there are many systems, each of which deals with an aspect of life, and among the systems is the internal system in the Kingdom of Saudi Arabia. The international community has developed in recent decades, just as much as

the internal community in Saudi Arabia. Whereas relations between countries were characterized by simplicity without complications. Nowadays, they are plagued by many difficulties, complexities, and entanglements. This has led to the emergence of issues whose effects extend beyond the countries concerned, and even extend to all other countries and the international community (El-Shazly, 2016).

Since Islamic countries leave the regulation of social issues and matters of personal status to Islamic jurisprudence, and are keen on religious principles and values derived from the true Islamic religion and revolving around the objectives of Islamic law, when they join an international or regional agreement or treaty, they will necessarily have Reservations on some of its provisions. What increases the importance of accuracy in approving, reserving, or rejecting some of the provisions in any international agreement is that international agreements are no longer limited to regulating the relations of states or governments with each other in political, economic, and cultural aspects only, but rather they have gone beyond that and intervened in various private and public fields. In the social field, international agreements became widespread, and these agreements began to regulate matters affecting the customs, traditions, and etiquette of different peoples. These agreements developed until they imposed some behaviors and customs on many societies near or far from them (Khalifa, 2018).

### **The Problem of the Study**

The problem of this study lies in the fact that there is a shortage of research that directly addresses the role of the Saudi internal system in shaping the Kingdom's reservations about international treaties. The 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).

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 (Yerkes, 2023).

### **The Objectives of the Study**

1. Examine the role of the Saudi internal system in shaping the Kingdom's reservations about international treaties.
2. Identify the difference between reservation and other forms of declaration.

### **The Questions of the Study**

1. What is the role of the Saudi internal system in shaping the Kingdom's reservations about international treaties.
2. What is the difference between reservation and other forms of declaration.

### **The Importance of the Study**

The importance of this study stems from its ability to address a rarely researched subject, that is the role of the Saudi internal system in shaping the Kingdom's reservations about international treaties. 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 (Meckdash, 2007).

The internal system in the Kingdom of Saudi Arabia is based on Islamic Sharia 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**

Sandholtz and Mulesky study (2020) aimed to identify reservation rights by explaining reservations to the human rights treaty, and through the factors that may affect states' amendment of their treaty obligations through reservations, using the descriptive analytical approach, and relying on a group of original data coding provision-level reservations (treaty-article-paragraph) to the ten core international human rights treaties, assuming that states will be more likely to have reservations when treaty obligations increase compliance costs and policy adjustment costs, and also assuming that the required provisions, i.e. provisions which create strong and precise obligations that require local procedures, to enhance the possibility of having reservation. The study used SPSS to analyze the study data, and it found that countries are more likely to have reservations about the most demanding provisions of the treaty, in contrast to previous studies. It also found that there are many reasons why states are more likely to retain obligations that are subject to a derogation condition.

Fenwick study (2017) aimed to identify reservations about multilateral treaties, through the descriptive analytical approach. The study concluded that the problem of reservations about multilateral treaties signed at the conclusion of international conferences is a problem that has been of interest to the organization for a long time. The territorial jurisdiction of the American States, as it is now with the United Nations Secretariat, also finds that once the

signatories agree to accept the proposed reservation under the belief, it is better for the designated state to cooperate in this restricted manner than not to cooperate at all.

Obando study (2017) aimed to identify the conditions for reservations and compatibility in the multilateral instrument: overcoming new interpretive challenges, by relying on the descriptive analytical approach, through the adoption of the Multilateral Instrument for Tax Treaty Measures (BEPS MLI), which was Adopted in November 2016, in the Global Tax Treaty Landscape, it is a multilateral agreement that aims to rapidly implement the treaty measures agreed in the Base Erosion and Profit Shifting (BEPS) project by allowing the amendment of double tax treaties (DTTS). The study found that in the following years, the countries applying multilateral law will face new interpretive challenges arising from the interaction between both instruments, new tax rules and different context. This investigation, which focuses on the complex system of reservations and consensus clauses implemented by the MLI, provides a response to how the text of the DTTs has actually been modified by the MLI and its consequences for the interpretation of the DTTs in general.

Bash study (2008) entitled "Reservation about Multilateral International Treaties" aimed to clarify the issues raised by reservation about multilateral international treaties, in light of the appropriate and acceptable solutions to these problems established by the Vienna Convention on the Law of Treaties between States. It addressed various jurisprudential literature related to the subject. While the researcher sought to synthesize these references, she missed highlighting some other important aspects that should have been given further research and study. The study concluded that it is permissible to make a reservation in multilateral international treaties, and that the conditions for accepting a reservation and objecting it, in Multilateral international treaties, are the formal and substantive conditions. She also pointed out that there are treaties that do not accept reservations by their nature, which are treaties that contain customary rules or jus cognitive rules. The effects of accepting or objecting a reservation, including, for example, the relationship of the states that accepted or rejected the reservation with the reserving states, and the effects of... Reservation on the relationship between other non-reserving states that are parties to the treaty.

### **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**

### **Reservations about international treaties**

International treaties have become one of the most important means of international cooperation, through which many aspects of joint cooperation between countries are achieved. If a state wishes to conclude an international treaty or join it, it may find among its provisions something that conflicts with its internal law, so the international community grants this state the freedom to have reservations about the provisions of such a treaty, with the necessity of not allowing this freedom to be reserved so as not to affect the content and purpose of the international treaty. Treaties are considered the first original source of public international law based on the statute of the International Court of Justice. International treaties that have a humanitarian nature do not only create a set of rules to protect human rights vis-à-vis states, but they also have a role vis-à-vis individuals (Al-Moussa, 2020).

Reservations about international treaties are considered one of the complex topics in international law, because each state desires to formulate the provisions of the treaty in accordance with its legal system, culture, and social norms, which makes international treaties turn into a list of selective options for implementing international obligations. This raises many legal problems, and with regard to international treaties, reservations about treaties are also sensitive issues, given their importance and universality. The Vienna Convention on the Law of Treaties in 1969 adopted a legal system of reservations, according to which it gave countries seeking to join the right to make reservations. The reservation system gives member states the right to amend or exclude from the provisions of the treaty what they deem inconsistent with their interests and various systems. International treaties have positives, and on the other hand, they have negatives. As for the positives of reservation, they appear on two levels, private and general. At the private level, reservation plays an essential role for the benefit of Islamic countries in which public order may clash or conflict with some provisions or texts of multilateral international treaties. The state or an international organization, when formally signing, approving, accepting, ratifying, or acceding to a treaty, may formulate a reservation, unless (Cowell, 2023)

A- The treaty prohibits this reservation.

B - The treaty stipulates that only specific reservations may be made, which do not include the reservation in question.

C - In cases not provided for in subparagraphs (a) and (b), the reservation is inconsistent with the object and purpose of the treaty.

A reservation is expressly prohibited by a treaty if the treaty contains a special provision prohibiting all reservations; Or it is prohibited to express reservations on specific provisions, and the reservation in question was made on one of these provisions; Or prohibits certain categories of reservations. The reservation in question falls within one of these categories. The reservation is incompatible with the subject matter and purpose of the treaty if it affects an essential element of the treaty that is necessary for its general direction (Al-Najjar, 2023).

### **Reservation in Islamic Sharia**

A reservation is to exclude one or more provisions of the treaty from the scope of the state's commitment or to limit or restrict its commitment to these provisions. Its purpose may be to

give the state a specific interpretation of the provisions mentioned in the treaty. A reservation is an official statement issued by a state or international organization when it signs, ratifies, or accedes to a treaty, which includes the conditions it sets in order to join the treaty. International agreements are no longer limited to regulating the relations of states or governments with each other in the political, economic, and cultural aspects. Rather, they have gone beyond that and intervened in various fields, including the social fields. In the social field, the relationship of members of society to each other and the relationship of family members to each other have become widespread. International agreements began to regulate matters affecting the customs, traditions and etiquette of different peoples (Rishmawi & Quiroga, 2023).

In order not to shock people with agreements that clash with their social and religious components, the drafters of international agreements resorted to presenting new concepts for third world countries to which developed countries are accustomed in the form of model laws or legislation. They call on countries to adopt them gradually, until the various countries become accustomed to them, which means that they become universal. For Islamic Sharia, it is effective to make reservations about international treaties that contain paragraphs and articles that contradict the essence of the Sharia principles. This, after all, feeds Islamic independence and keeps its essence pure without having to be exposed to foreign ideas that are based on the positive law. However, in some cases, Islam welcomes international treaties without any reservations if these treaties support and empower Islamic purposes and values (Donnelly & Myers, 2023).

### **The Impact of Reservations on Treaties**

Before we mention the impact of reservations, it is necessary first to clarify what is meant by valid reservations (Tabbal, 2010).

1- The correct reservation (condition) according to the Hanafi school is: "It is (the condition) required by the treaty, or compatible with what the treaty requires, or the text indicates its permissibility, or custom has established its permissibility".

2- The correct reservation (condition) according to the Malikis: "is (the condition) required by the treaty, or (the condition) which is neither required by the treaty nor (is) contradicted by it."

3- The correct reservation (condition) according to the Shafi'is: "is (the condition) that is required by the treaty, or (the condition) that is not required by the treaty, but which is in the interest of the treaty, or of the two parties to the treaty, or for one of them.

4- The correct reservation (condition) according to the Hanbalis: "is (the condition) that is required by the treaty, or (the condition) that is in the interest of the treaty, or (the condition) that is not required by the treaty, and is not in the interest of the treaty but it does not contradict the requirements of the treaty."

The impact of reservations (conditions), according to the majority of Muslim scholars, are made because of corrupt or negative items included in the treaty the main impact of reservations is that they support the validity of Islamic provisions and values in the face of positive man-made law. Invalidity and corruption are synonymous terms according to the majority of jurists. Each of them means the other without any difference, and what is meant by them is that the thing is not consistent with the Islamic principles.

Islamic Sharia is one of the four prevailing laws or legal systems in the world, which are the main sources of international law (the Latin system, the Anglo-Saxon system, Islamic Sharia, the socialist system). It is the third source of public international law, or it is one of the



principles considered in civilized countries. This means that any reservation taking into account Islamic sharia is a valid reservation according to international law.

### **The difference between reservation and other declarations**

A reservation differs from other declarations in that the declaration of the reservation aims to exclude the effect of some provisions of the treaty or to modify them in its relationship with other parties to it. Therefore, the declaration issued by the state cannot be considered a reservation if that state intends through it to make a statement about position or political direction on a given issue without its aim to oblige other international parties to the treaty to accept this view (Alwan, 2007).

Therefore, the declaration of intentions cannot be considered a reservation, given that the declaring state absolutely does not want to exclude or amend some of the provisions included in the texts of the treaty. In 1959, India expressed its approval of the Government Consultative Organization for Maritime Navigation Convention, its acceptance document included a reservation about the convention, it stated: "The protection measures taken or being taken by India for the benefit of its national ships and related industries are measures consistent with Article (1/B) of the Convention. Accordingly, the recommendations issued on this subject are subject to re-examination by India, and acceptance of the Convention will not have the effect of changing its internal law. However, the representative of India interpreted his country's position as saying that this declaration is not a reservation, but rather constitutes a declaration of intent, because his country wanted from that declaration to express its position on the objectives of the organization's advisory and advisory functions in order to keep pace with the procedures adopted by India in this regard. Accordingly, India joined as a member of this organization (Emad, 2006).

### **The impact of the reservation on the state itself**

The state's keenness to preserve its sovereignty prompts it to express its reservations to exempt itself from applying some provisions as its own interpretation limits its commitment to these provisions, since a reservation is a restriction on the part of a contracting state of the obligations contained in the treaty.

The acceptance by the state or organization of the reservation makes the state or organization that made this reservation a party to the agreement vis-à-vis the state that accepted it since the entry into force of the agreement between them. This is what is stipulated in Article (21/2/a) of the Vienna Convention on the Law of Treaties in 1969. This acceptance may be explicit if it is in a written letter in which the state explicitly expresses its acceptance of the reservation, or it may be implicit if the state remains silent in declaring its rejection of the reservation within twelve months from the date of its official notification of it or until the date of its expression of its consent to be bound by the treaty (Amer, 2000).

We conclude from the above that the state must take into account a set of considerations when ratifying or joining treaties: If it violates the system and provisions of Sharia law, it shall refuse to join it. The state can also ratify it while excluding some of its provisions through a reservation. A reservation is considered a guarantee for the state and the protection of its public order. We can give an example of this with regard to international human rights conventions as well as women's rights, as the state takes into account when linking to it is not to violate the provisions of national law unless it can maintain the law, taking into account the possibility of its reservation on some articles of the treaty (Al-Otaibi, 2008).

### 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.
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 recommended adopting a number of recommendations that came as a result of the research:

1. The need to clarify the Saudi negotiator's familiarity with all internal regulations and customs of the Kingdom before embarking on international negotiation processes.
2. The Kingdom's shall assert its legislative identity in all international conferences and treaties.
3. The Kingdom shall clarify its legal norms and legislation to the international community and the entire world.
4. There is a need to spread the Kingdom's culture globally in order to facilitate the understanding of the Kingdom's reservations regarding some treaties.
5. The need to carefully read the texts of treaties and understanding their mechanisms before delving into decision-making provisions so as not to fall into some unwanted obligations locally.
6. The need to maintain the formation of regional blocs, especially Islamic, Arab and Gulf blocs, to confront global challenges and initiatives that are not compatible with local systems and customs.

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