

17 COMPREHENSIVE STUDY OF THE RESERVATIONS TO TREATIES MADE BY HUNGARY

Anikó Szalai*

The reservation to treaties is a complex topic and most of the academic discussion relates to either theoretical issues¹ or to a specific reservation of one or more states (usually relating to the field of human rights law).² Rarely can one find an article which would comprehensively analyse all the reservations of one state.³ The International Law Commission adopted the more than 600 pages long guide to the law of reservations (herein-after: ILC Guide), which demonstrates the mentioned complexity. Generally speaking the guide defines 3 main forms of reservations, such as the “genuine” or “real” ones, those which are allowed by the provision of the treaty, and those which are specifically dealing with the acceptance of compulsory jurisdiction of the International Court of Justice. A dispute exists whether the last two categories can be considered reservation. The most notable opponent of calling the “opt-out-notifications-allowed-by-the-treaty” reservation is the International Labour Organization. ILO conventions typically allow for opting out of certain of its provisions, while at the same time they prohibit reservations.⁴ The ILC Guide states that in accordance with the wide scope of the relevant articles of the Vienna

* Anikó Szalai: associate professor, University of Szeged. Supported by the UNKP-17-4 New National Excellence Program of the Ministry of Human Capacities.

- 1 See e.g.: V. Lamm, ‘The Multilateral Treaty Reservation Revisited’, *Acta Juridica Hungarica*, Vol. 47, No. 4, 2006, pp. 331-349; R. Baratta, ‘Should Invalid Reservations to Human Rights Treaties Be Disregarded?’, *European Journal of International Law*, Vol. 11, No. 2, 2000, pp. 413-425; I. Buffard & K. Zemanek, ‘The “Object and Purpose” of a Treaty: An Enigma?’, *Austrian Review of International and European Law*, Vol. 3, 1998, pp. 311-343; J.M. Ruda, ‘Reservations to Treaties’, *Recueil des Cours*, Vol. 146, 1975 III, pp. 95-218.
- 2 See e.g.: J.P. Gardner (ed.), *Human Rights as General Norms and a State’s Right to Opt Out: Reservations and Objections to Human Rights Conventions*, British Institute of International and Comparative Law, London, 1997; M. Coccia, ‘Reservations to Multilateral Treaties on Human Rights’, *California Western International Law Journal*, Vol. 15, 1985, pp. 1-51; L. Lijnzaad, *Reservations to UN Human Rights Treaties: Ratify and Ruin?* T.M.C. Asser Institut, the Hague, 1994; C.J. Redgwell, ‘Reservations to Treaties and Human Rights Committee General Comment No. 24 (52)’, *International and Comparative Law Quarterly*, Vol. 46, 1997, pp. 390-412.
- 3 But see e.g.: Y. Wang, ‘China’s Practice in Treaty Reservations since 1949: Legal and Policy Evaluation’, *Journal of East Asia and International Law*, Vol. 10, 2017, pp. 401-426.
- 4 How International Labour Standards are created? ILO website, www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm.

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Convention on the Law of Treaties, these shall also be considered reservations.⁵ Contrary to the understanding of the ILC Guide this study only examines those statements which can be considered as “genuine” reservations, thus which are not “opt-out clauses”, expressly allowed by the treaty.

Hungary is a party to approximately 2100 treaties, out of which about 350 international agreements are multilateral. Hungary had or has a reservation to about one tenth of the multilateral treaties, so approximately to 35 treaties, in about 25-30 subject matters. This comprehensive study aims at the examination of these reservations, their effect on the Hungarian legal system and whether there is any reasonable justification for keeping them or would be better to withdraw them.

17.1 INTERNATIONAL HUMANITARIAN LAW AND THE OLDEST RESERVATION

According to György Haraszti the first reservation to a treaty was made by Sweden in 1815 to the Vienna Peace Treaty concluding the Napoleonic wars, but its widespread application is linked to the proliferation of multilateral treaties in the 1880s.⁶ The practice of reservations has become regular at the 1907 Hague Peace Conference. “Forty-four states participated at the conference, which concluded 13 agreements, out of which 11 was affected by 67 reservations made by 28 different member states.”⁷ One of them was the Austro-Hungarian Empire, declaring in its reservation that it did not accept Article 44 of Convention No. IV, which stated that “A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense.”⁸

According to the publicly available and official register of the Dutch depository government⁹ and the website of the International Committee of the Red Cross,¹⁰ this reservation is still in effect both for Hungary and Austria. This allows us to examine the topic from several different angles. Is this reservation still in effect if we consider the issues of state succession, the effect of armed conflicts and the non-existence of a state for a period of time? Is this reservation still relevant regarding its merits?

5 ILC Guide to Practice on Reservations to Treaties, Report of the International Law Commission, 63rd session, 2011, A/66/10/Add.1, pp. 56-62.

6 Gy. Haraszti, *A nemzetközi szerződésekhez fűzött fenntartások*, Közgazdasági és Jogi Könyvkiadó, Budapest, 1961, p. 26.

7 Id., p. 31.

8 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

9 Dutch Government Treaty Database, Reservations to Convention respecting the laws and customs of war on land. https://treatydatabase.overheid.nl/en/Verdrag/Details/003319_b.html.

10 International Committee of the Red Cross, Treaties, States Parties and Commentaries – Hungary: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=HU.

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In the past one hundred years, since the creation of Convention No. IV and the acceptance of the reservation to it, the Austro-Hungarian Empire was first affected in World War I, the end of which also resulted in the termination of the state, resulting in several new states. Since then Hungary has existed as a state without interruption, however, Austria was a part of the German Third Reich from 1938 to 1945 and then not existed for ten more years. It can safely be stated that reservations share the fate of the treaty to which it is made in the event of state termination and state succession in treaties. Thus if succession takes place with regard to the treaty, the reservation is also succeeding, except if an express unilateral declaration is made to the contrary by the successor state.¹¹

The effect of armed conflicts on treaties is a complex topic, nevertheless we can safely state that if the armed conflict does not influence the legal effect of a treaty then the reservation made to it is also not affected by it. This is especially so with regard to treaties specifically concluded to regulate the legal state of armed conflict, such as the concerned Hague Convention No. IV.¹²

Considering the substance of the reservation, it must be admitted that it can only have symbolic relevance, because Hungary is a party to the 1929 and 1949 Geneva Conventions. According to Article 89 of the 1929 Geneva Convention Hungary accepted that the newer regulations supplement the rules of the Hague Conventions, adopted prior. Furthermore, this is also strengthened by the provisions of the 1949 Geneva Conventions. Geneva Convention No. IV of 1949 is of special relevance, since its Article 31 regulates the same issue as the above mentioned Article 44 of Hague Convention No. IV. Relative to the protection of civilian persons in the time of war it states that “No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.”¹³ This provision is much wider than the previously, by way of reservation, excluded Article 44: this does not only pertain to the occupied territory and its population, but to all protected persons, and covers all information, not only those which are related to the army or defense capacity of the other belligerent. Based on the principle of *lex posterior derogat legi priori* it is not questionable in the legal practice, that the 1949 Geneva Convention No. IV is applicable, especially since all those states are parties to it which are parties to the 1907 Hague Convention No. IV. Nevertheless, the

11 This experience is in line with Art. 20 of the 1978 Vienna Convention and the Guide of the International Law Commission on reservations. See Vienna Convention on succession of States in respect of treaties, Vienna, 23 August 1978, United Nations, Treaty Series, Vol. 1946, p. 3; ILC Guide to Practice on Reservations to Treaties, Report of the International Law Commission, 63rd session, 2011, A/66/10/Add.1, pp. 560-600.

12 See A. Szalai, *A fegyveres összeütközések hatása a nemzetközi szerződésekre*, Pólay Elemér Alapítvány, Szeged, 2013; Zs.E. Kémeri, ‘Review of the Monograph on ‘The Effect of Armed Conflicts on International Treaties’, *Hungarian Yearbook of International Law and European Law 2015*, Eleven International Publishing, Hague, 2016, pp. 641-644; Analytical guide to the work of the International Law Commission: Effects of armed conflicts on treaties, http://legal.un.org/ilc/guide/1_10.shtml.

13 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Art. 31.

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Hague Convention is still in effect, the reservation to it does not “decay”, is not annihilated by desuetude, since termination of a reservation is only possible via an express declaration.¹⁴

It is worth mentioning here that Hungary had reservations to the 1949 Geneva Conventions between 1955 and 2000. These reservations related to the modified application of those articles of the Conventions which concern the competence of the protecting power, the legal status of those prisoners of war who are convicted of war crimes and crimes against humanity and the mutual responsibility of the concerned powers in the case of the transfer of prisoners of war and of protected persons. These reservations closely related to the alliance with the Soviet Union and that the USSR’s proposals regarding the wording of the Conventions were not accepted as final text (as this is highlighted in detail at the introductory words to the note containing the reservations).¹⁵ Similar or the exact same reservations were made by the Soviet Union and other Soviet satellite states, like Albania, Bulgaria, Poland, Romania, Czechoslovakia and Yugoslavia.¹⁶ Hungary withdrew these reservations in 2000, declaring it obsolete, and this step was soon taken by Slovakia as well.¹⁷ The example was followed by Poland in 2004. Albania, Bulgaria and Romania still keeps them in effect, as well as the Czech Republic.¹⁸ The case of Slovakia and the Czech Republic is interesting, because after the dissolution of Czechoslovakia both of them declared to be successors in the Geneva Conventions with expressly adding the taking over of the reservations of the predecessor state.¹⁹ The maintaining of reservations was decided notwithstanding the cessation of the Soviet Union by then and the experiences from the dissolution of Yugoslavia, namely that when Croatia and Slovenia expressed their succession in the Geneva Conventions, they also declared the discontinuance of the reservations made by Yugoslavia.²⁰

17.2 COMPULSORY SETTLEMENT OF DISPUTES – THE MOST FREQUENTLY APPLIED HUNGARIAN RESERVATION

A generally applied practice in the socialist era among the Soviet Union and its satellite states was the reservation, with which the compulsory jurisdiction of the International

14 Such a way of termination as a possibility is neither mentioned by the ILC. See ILC Guide to Practice on Reservations to Treaties, Report of the International Law Commission, 63rd session, 2011, A/66/10/Add.1.

15 Reservations made at the time of signature of the Geneva Conventions for the Protection of War Victims of August 12, 1949, United Nations, Treaty Series, Vol. 75, pp. 432-436.

16 *Id.*, pp. 420-464.

17 United Nations Treaty Series, Vol. 2117, pp. 301-307.

18 See the website of the UN Treaty Series: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801591b0&clang=_en.

19 Czech Republic: United Nations Treaty Series, Vol. 1712, p. 401; Slovakia: United Nations Treaty Series, Vol. 1723, p. 246.

20 United Nations Treaty Series, Vol. 1683, p. 229.

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Court of Justice or an arbitration forum was excluded in disputes arising from the treaty to which the reservation had been made. The reservation relating to the ICJ pertained to the prevention of unilateral suing of the state at the ICJ in the event of a dispute arising from the relevant treaty. Hungary, as many other states, was of the view that international court proceedings shall only start if all the concerned states expressly agree to the jurisdiction of the court. Based on my empirical research, reservations of such content have been made to at least nineteen treaties by Hungary. The circle of these multilateral agreements includes human rights conventions (e.g. the Genocide Convention, the Convention against Torture, Convention on the Political Rights of Women), the two Vienna Conventions codifying the law of treaties, the two treaties codifying the privileges and immunities of the United Nations and its specialised agencies and, for example the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. Out of the 19 mentioned cases two treaties allow for the making of such reservations (Single Convention on Narcotic Drugs, 1961 and Convention on Psychotropic Substances, 1971). Most of these reservations were withdrawn by Hungary during the change of regime in 1989 and 1990,²¹ but according to the registry of the United Nations such reservations are still in effect in at least six cases and no opposing information can be revealed from Hungarian domestic law.

When examining the mentioned six cases they can be categorized into three different groups:

1. Four agreements and the reservations annexed to them have been promulgated in Hungarian domestic law: Convention on the measurement of inland navigation vessels, Geneva, 1966;²² Convention relating to the unification of certain rules concerning collisions in inland navigation, Geneva, 1960;²³ Convention concerning Customs Facilities for Touring, New York, 1954, with its Additional Protocol of 1954.²⁴
2. One agreement has been promulgated in Hungarian domestic law, but without the mentioning or text of the reservation. A search in the UN Treaty Series shows the reservation to still be valid: Customs Convention on the Temporary Importation of Private Road Vehicles, Geneva, 1954.
3. In case of one agreement neither the treaty, nor the reservation has been promulgated in Hungarian law, and it seems that it has been forgotten both by the legislator and by legal science: International Convention concerning the Use of Broadcasting in the Cause of Peace, Geneva, 1936. Hungary acceded to the treaty in 1984, which in Article 7 designates the compulsory jurisdiction of the Permanent Court of International

21 See e.g.: United Nations Treaty Series, Vol. 1551, pp. 320-339.

22 Convention on the measurement of inland navigation vessels, Geneva, 1966, United Nations, Treaty Series, Vol. 964, p. 177.

23 Convention relating to the unification of certain rules concerning collisions in inland navigation, Geneva, 1960, United Nations, Treaty Series, Vol. 572, p. 133.

24 Convention concerning Customs Facilities for Touring, New York, 1954, with its Additional Protocol of 1954, United Nations, Treaty Series, Vol. 276, p. 191; Vol. 596, p. 542.

Justice (with respect to the date of conclusion). In 1984 the United Kingdom objected to this reservation, however, Hungary has not withdrawn it yet.²⁵

Hungary has a moderate dualist system when dealing with the relationship of international and domestic law. Categorization from the point of view of whether the treaty and the reservation are promulgated in Hungarian domestic law sheds light also on the issue of including the text of the reservations in domestic law. It can be generally stated that Hungary publishes the text of the reservation in the promulgating law, if the international agreement is promulgated. This has always been the case, also before the national legal obligation to publish the text of the reservation has been introduced by a decree in 1982.²⁶ However, promulgation had and still has its deficiencies, for example the intentional or accidental omission of promulgation of certain treaties (along with their reservations).

Besides the compulsory jurisdiction of the ICJ, treaties often prescribe the other means of dispute settlement, such as arbitration or conciliation. Hungary showed the same attitude toward these provisions as previously mentioned in relation to the jurisdiction of the ICJ. Altogether eleven treaties' concerned provisions had or have been excluded by way of reservation by Hungary. Some of these treaties coincide with the ones mentioned in the exclusion of the jurisdiction of the ICJ, such as the two Vienna Conventions on the law of treaties or the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft. Out of the eleven cases, only with regard to 5 treaties had the reservations been withdrawn, in 1989 and 1990. In the remaining six cases it seems that Hungary simply has forgotten to withdraw them. Four of these agreements have already been mentioned above in relation to the ICJ: Convention concerning Customs Facilities for Touring, New York, 1954, with its Additional Protocol; Customs Convention on the Temporary Importation of Private Road Vehicles, Geneva, 1954; International Convention concerning the Use of Broadcasting in the Cause of Peace, Geneva, 1936. The lives of the remaining two treaties are worth examining:

1. Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975. The convention was promulgated in 1978 by Law-Decree No. 16 and it contained the text of the reservation. This legal norm was repealed and the convention with its amendments re-promulgated in a unified act (Act XLII of 2013), which, in Article 35, authorizes the Minister of Foreign Affairs to withdraw the reservation. Nevertheless, it seems that nothing has happened yet, because all international registries show the reservation to be valid. We can presume that the withdrawal of the reservation has not happened yet in the necessary diplomatic note.

25 International Convention concerning the Use of Broadcasting in the Cause of Peace, Geneva, 23 September 1936, League of Nations, Treaty Series, Vol. 186, p. 301; On the status of the treaty see: https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=513&chapter=30&clang=_en.

26 Law Decree 27 of 1982 on the procedure relating to treaties.

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2. International Convention on the Harmonization of Frontier Controls of Goods, 1982. This agreement has never been enacted into Hungarian domestic law, which is interesting since recently some bilateral treaties concluded by Hungary refer to it as underlying law.²⁷ According to the UN Treaty Series Hungary is a party to it and the reservation made in 1984 is still in effect.²⁸

Withdrawal of all of the remaining reservations, which exclude the jurisdiction of the ICJ or arbitration, would be wise since Hungary has changed its relevant policy almost 30 years ago.

17.3 **LAW OF THE SEA – ANOTHER SOVIET RESIDUE**

Hungary is a party to two of the 1958 conventions regulating the law of the sea, it signed the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the High Seas. With respect to the one on the territorial sea, in line with the other socialist states, Hungary expressed in a unilateral declaration that it is “of the opinion that the coastal State is entitled to make the passage of warships through its territorial waters subject to previous authorization” in relation to Articles 14 and 23. When we examine the text of the cited articles it becomes evident that such a statement is contradictory to the intended meaning of the convention and can only be considered as a reservation to it, notwithstanding the not-so-clear phrasing: “is of the opinion.” This was the view of Australia, Madagascar, the United Kingdom and the United States as well, which expressly objected to it. These four also objected to the reservation of Hungary to Article 21 of the convention, in which it claimed full immunity for government ships, whether commercial or not.²⁹

In relation to the convention on the high seas similar immunity for commercial ships was declared by Hungary in its reservation. Besides the reservation it also made a declaration in “disguise”: in name it is a declaration, but in reality it is a reservation. In this “declaration” Hungary expressed its disagreement with the definition of piracy in the convention. In its opinion the accepted definition “is not consistent with present international law and does not serve the general interests of the freedom of navigation on the

27 See e.g.: Act IV of 2012 Agreement between the Government of Hungary and the Government of Serbia on the control of road, railway and waterway border traffic; Act LXVIII of 2012 Agreement between the Government of Hungary and the Ministerial Cabinet of Ukraine on the control of road and railway border traffic.

28 International Convention on the Harmonization of Frontier Controls of Goods, Geneva, 21 October 1982, United Nations Treaty Series, Vol. 1409, p. 3. The European Union is also a party to the Convention, about its members and reservations see: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-A-17&chapter=11&clang=_en.

29 United Nations, Treaty Series, Vol. 516, p. 256.

high seas.”³⁰ An interpretative declaration made to a treaty has to be regarded a reservation if its content fulfils the criteria of a reservation, namely it does not only interpret the provision, but modifies or excludes its legal effect in its application. Several other parties to the convention reached the conclusion that this was in reality a reservation, and they objected to it.³¹

The view behind this reservation of Hungary was that according to the Soviet legal doctrine this definition of piracy does not cover all the action which shall be considered as piracy. They especially missed the prohibition of state piracy, when piracy is committed by the state with its warships. In their opinion this was the most dangerous to international peace of all the types of piracy, and thus it is unacceptable to leave it out.³²

Besides the Soviet Union the same declaration was made by other Eastern-European socialist countries, and since then only the Czech Republic and Slovakia withdrew it, but in their case this is rather owing to the fact of the dissolution of former Czechoslovakia, after which they re-entered to the convention as new signatories (the convention has been in effect for them since 1993, without the former reservation).³³ Even though other Eastern-European states have not yet withdrawn this reservation called declaration (and the other reservations mentioned in relation to the convention on the high seas and the convention on the territorial waters), the question arises whether there is any reason for further keeping them in effect.

In lack of territorial sea and no commercial or navy sea fleet these conventions and the reservations to it are of rather symbolic than real significance.³⁴ Furthermore, Hungary is also a party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS).³⁵ Article 101 of UNCLOS defines piracy very similarly to the 1958 Convention on the High

30 United Nations, Treaty Series, Vol. 450, p. 146.

31 Germany, Japan, Netherlands, Madagascar, Thailand. See: Status of the Convention on the High Seas, United Nations Treaty Series, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-2&chapter=21&clang=_en#EndDec.

32 W.E. Butler, 'International waters', in F.J.M. Feldbrugge, G.P. Van den Berg & W.B. Simons (ed.), *Encyclopaedia of Soviet Law*, 2nd revised ed., Martinus Nijhoff Publishers, Dordrecht, 1985, p. 394.

33 See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-2&chapter=21&clang=_en#EndDec.

34 This statement is absolutely true with regard to the still in effect reservation of Hungary to the Convention and Statute on the International Regime of Maritime Ports, signed at Geneva, in 1923. Hungary, already without a territorial sea and maritime port in 1923, reserved its right, as allowed under Article 12 of the Statute, to regulate and limit the transfer of emigrants to vessels specifically authorised by the state. League of Nations Treaty Series, 1926-1927, Vol. LVIII, p. 284. The convention is still in effect with respect to Hungary, but Act XXII of 1929, which promulgated it into Hungarian law, does not contain the reservation, it can only be found on the website of the League of Nations Treaty Series. See https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=562&chapter=30&clang=_en Act XXII of 1929 survived a big de-regulation hype in 2007, but it seems that the actual check of whether a promulgating legal norm contains an international agreement which is still in effect did not include the check of the effect and relevance of the reservations relating to it. See Act LXXXII of 2007.

35 United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, United Nations, Treaty Series, Vol. 1833, p. 3.

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Seas, only covering the relevant actions of civilians/private persons. Article 102 amends this with the situation when piracy is committed by the mutinied crew of the government ship or warship, nevertheless, this action cannot be attributed to the state, thus the 1982 UNCLOS is also silent on the case of piracy committed by the state. Hungary signed UNCLOS in 1982, it entered into force in 1994 and based on the registry of the UN Hungary ratified it in 2002, but it is yet to be promulgated into Hungarian domestic law.³⁶ No reservation to the definition of piracy has been expressed by Hungary to UNCLOS, thus it can be stated that in the relationship to other parties of UNCLOS, Hungary accepts the definition of piracy as it is, while in relation to those not parties to UNCLOS, but parties to the 1958 Convention on the High Seas Hungary does not accept it. There are 168 parties to UNCLOS, while the 1958 Convention has only 63, but only six states exist which are parties exclusively to the 1958 Convention: Afghanistan, Cambodia, the Central-African Republic, Israel, the United States and Venezuela.³⁷ Thus it can be concluded that toward 167 states out of the 193 members of the United Nations Hungary has no problem accepting the conventional regulation of piracy, while in relation to 26 Hungary only accepts the definition of piracy as established by customary international law. However, the customary term is most probably the same as the one contained in UNCLOS, since neither the Soviet Union in the signing of it in 1982, nor Russia in the ratification of it in 1997 expressed a reservation on Article 101 and 102 of UNCLOS. Furthermore there is no reference to an exception or disagreement regarding the definition of piracy in modern literature about the Russian view of international law of the sea.³⁸

17.4 HUMAN RIGHTS – RESERVING THE PROVISION ON RESERVATIONS

The most objected reservations are the ones made to human rights treaties, especially in such cases when the state expresses that it only applies the concerned convention inasmuch as it conforms with its domestic law, for example with Islamic Law.³⁹ Such vague and general reservation has never been made by Hungary, and it is not characteristic of Hungary to have reservations to the ratified human rights agreements. Hungary used to

36 See: https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec.

37 See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-2&chapter=21&clang=_en.

38 W.E. Butler (ed.), *International Law – A Russian Introduction*, Eleven International Publishing, Utrecht, 2009, pp. 439-440.

39 See e.g. the reservations made to the Convention on the Elimination of All Forms of Discrimination against Women, 1979, by Bahrain, Bangladesh the Bahamas and Algeria. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en.

have a reservation to the European Convention on Human Rights, giving time for the full change of the legal system at the beginning of the 1990s.⁴⁰ Another, declaration in name, but in reality reservation, belonged to the Convention relating to the Status of Stateless Persons (1954), which was withdrawn in 2012.⁴¹

Nevertheless one reservation still exists relating to a human rights treaty, although not pertaining to a provision on human rights, but rather on treaty law. In the lack of written norms on the law of treaties and reservations, the creators of the 1953 Convention on the Political Rights of Women⁴² decided to include a rule in the treaty itself on the making of reservations to it. Article VII of the convention declares that the submission of a reservation is possible to the convention, but if it is objected by a state, than the convention shall not enter into force between the State making the reservation and the one objecting to it. Thus the convention itself precludes the entry into force vis-à-vis the two concerned parties, and the partial or modified entry into force of the convention between them is not possible.

The reservation (named as a declaration) made by Hungary is directed exactly to that requirement, claiming that such a rule cannot be accepted, because objections cannot only have a wholly excluding character, but on the contrary, objections can only preclude the entry into force of the concerned article without touching upon the rest of the convention.⁴³ The same declaration was made by the other Eastern-European socialist countries, thus it can be stated that the Soviet approach to international law was more flexible toward reservations and objections in the 1950s than Western legal science or the International Law Commission. *Sir Humphrey Waldock*, who worked at the preparation of the 1969 Vienna Convention on the Law of Treaties accepted only at the beginning of the 1960s these two possibilities of legal effect, namely that not only full exclusion can occur, but partial exclusion of the legal effect specifically with respect to the concerned article.⁴⁴ In the 1969 Vienna Convention this was codified as the general rule, and for full exclusion of the legal effect an express declaration is required by the objecting state.⁴⁵

It is a fact that the past decades justified the Hungarian State in respect of the general rule, however, this does not preclude the creators of a treaty from regulating the reservations and objections relating to that treaty. The drafters of the text can include a rule prohibiting reservations to any or all of the articles, as it has been done several times

40 The reservation concerned Art. 6 of the Convention and was valid between 1992 and 2000. See: Reservations and declarations for Hungary, www.coe.int.

41 See the website of the United Nations Treaty Series, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en#EndDec.

42 Convention on the Political Rights of Women, New York, 1953, United Nations, Treaty Series, Vol. 193, p. 135.

43 See the website of the United Nations Treaty Series: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-1&chapter=16&clang=_en.

44 ILC Guide to Practice on Reservations to Treaties, Report of the International Law Commission, 63rd session, 2011, A/66/10/Add.1. p. 255.

45 Vienna Convention on the Law of Treaties, Vienna, 1969, Art. 20.

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(e.g. in ILO Conventions,⁴⁶ or the 1960 Convention against Discrimination in Education⁴⁷). The case of Article VII of the Convention on the Political Rights of Women is not so different from this possibility, actually it is even more flexible than the situation when all reservations are banned. The Hungarian State never opposed to provisions prohibiting reservations, thus it would be timely to withdraw that “declaration”, which was considered to be a reservation by many of the other signatories and against which they objected to.⁴⁸ (It shall be mentioned here that 1989 Hungary withdrew its reservation about the exclusion of the compulsory jurisdiction of the ICJ in disputes arising from the 1953 Convention, but this notification of withdrawal only pertained to the reservation to the concerned article and did not mention this “declaration.”)⁴⁹

17.5 CRIMINAL MATTERS

Most of Hungary’s recent, modern reservations belong to the conventions signed under the realm of the Council of Europe, in the 1990s, after joining the organization. Many of these belong especially to the field of criminal law, reservations pertain to three conventions in this category.

The European Convention on Extradition⁵⁰ and its Additional Protocol:⁵¹ the reservations were submitted at the time of ratification, and mostly they aim at the restriction of granting extradition if the proper rule of law is not secured by the other state, for example if the criminal procedure against the person to be extradited was or is conducted by a special court, or based on humanitarian grounds, if the extradition would cause particular hardship for the person, or if the person is charged with an offence punishable by death penalty, or if the requested person is settled indefinitely in Hungary. These reservations are quite typical, but there is one unusual, a “*l’art pour l’art*”-styled one made to the Additional Protocol of the Convention. This reservation says that even though Hungarian law is in accordance with Article 1 of the AP, Hungary still reserves the right to consider on a case-by-case basis whether violations of the laws of war can be regarded as political offences, contrary to the criteria set in Article 1(c).

The European Convention on Mutual Assistance in Criminal Matters:⁵² the reservations linked to this convention cover such issues as assistance is only given in procedures

46 See: How International Labour Standards are created? ILO website, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm>.

47 Convention against Discrimination in Education, Paris, 1960.

48 E.g.: Canada, Denmark, Israel, Ethiopia, Norway, Sweden, Pakistan. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-1&chapter=16&clang=_en.

49 United Nations Treaty Series, Vol. 1551, p. 324.

50 European Convention on Extradition, Paris, 1957, ETS No. 024.

51 Additional Protocol to the European Convention on Extradition, Strasbourg, 1975, ETS No. 086.

52 European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 1959, ETS No. 030.

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instituted in respect of such offences, which are also punishable under Hungarian law, or that information on the judicial records are made available only in respect of an individual who has been charged or brought to trial in the requesting state. Hungary, as many other parties of the convention excluded the application of Article 22, which requires the automatic and regular sending of information to other contracting parties with regard to criminal convictions and subsequent measures instituted against the national of the concerned party. As mentioned, this is not unusual, and in the era of detailed mutual assistance in criminal matters under the umbrella of the European Union, in practice, this might cause disadvantages only for those states, which are not member states of the European Union.

The European Convention on the Suppression of Terrorism:⁵³ the reservation linked to this convention can be regarded as ambiguous, because it results in a contradictory application of law. Article 1 of the Convention declares that the listed offences shall not be regarded as political offence for the purpose of refusing extradition. But Hungary reserves its right to refuse extradition if in its consideration the relevant offence is political, except if the offence involves homicide. The list in Article 1 contains very serious crimes, many of which are expressly defined through citing a treaty. Hungary signed and ratified all of the cited treaties without reservation to the characterization of the crimes included in them. Among the concerned treaties one can find the Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 1970;⁵⁴ and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971,⁵⁵ with such offences mentioned as an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; an offence involving kidnapping, the taking of a hostage or serious unlawful detention. All of these actions are punishable under Hungarian criminal law, in accordance with the requirements of the mentioned conventions, for example Article 2 of the 1970 Hague Convention on the unlawful seizure of an aircraft obliges all states to punish the offence “by severe penalties.”

17.6 CIVIL AND INTERNATIONAL ECONOMIC LAW MATTERS

The reservations in the subject of civil law and economic law are similar to the ones in criminal law: many of them have recently been made, and are still relevant. Naturally, some exceptions can be found here as well.

Hungary’s reservation to the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages states that marriage can be concluded

53 European Convention on the Suppression of Terrorism, Strasbourg, 1977, ETS No. 090.

54 Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 1970, United Nations Treaty Series, Vol. 860, p. 105.

55 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971, United Nations Treaty Series, Vol. 977, p. 177.

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only if both of the intending spouses are present. Thus it excludes the possibility of granting marriage in the absence of one of the concerned persons. This principle has been present in Hungarian civil law for a long time, already the first act on civil marriage law, adopted in 1894, prescribed that.⁵⁶

It has already been mentioned that in some cases Hungary made a declaration to a treaty, which was in reality a reservation. Such an example exists in this category as well, even though its relevance is not so significant, since it had been withdrawn in 2015. The declaration/reservation, made in 1983, stated that the General Conditions of Delivery of Goods between Organizations of the Member Countries of the Council for Mutual Economic Assistance (GCD CMEA) was subject to the provisions of Article 90 of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG). It is not the reservation itself which is interesting to us, but that it was in name a declaration and has been withdrawn. The withdrawal of declarations is not typical of Hungary and many has been when signing or ratifying treaties. Most of these declarations can be regarded as fully obsolete, but of course they are only declarations, without major legal effect on the application of the relevant treaty. However, it would be useful to withdraw at least those declarations which are reservations in reality (such as this one or the one mentioned in relation to the law of the sea and the definition of piracy). One tip on a declaration which would be worth withdrawing is the one made in 1966 about the public holidays in Hungary, when payment cannot be demanded in respect of bills of exchange and promissory notes, under the 1930 Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes.⁵⁷ The list includes such “antiques” as 4 April (Liberation Day) and 7 November (Anniversary of the October Socialist Revolution).⁵⁸

Another interesting reservation in this category is the one made to the UNCITRAL Convention on the Recognition and Enforcement of Foreign Arbitral Awards of New York, 1958. According to this reservation Hungary recognizes only those foreign arbitral awards which are made in respect of commercial relationships. The reservation was introduced by Hungary in 1962, when the difference between civil and commercial legal relations was more distinct than in the 21st century. Hungary regulates all civil and commercial matters in a monistic way in its Civil Code, thus it is not easy to distinguish between these two groups of legal relations.⁵⁹ Also if we take into account the changed manner of commerce and economy at the time of globalization, one wonders whether this reservation can still be applied, but since not being a civil lawyer I leave that conclusion to them.

56 See Art. 39 of Act XXXI of 1894 on Marriage Law.

57 Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, Geneva, 1930, League of Nations Treaty Series, Vol. 143, p. 257.

58 Text of the declaration: https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=551&chapter=30&clang=_en.

59 See P. Bárdos, *Bevezetés a kereskedelmi jogba*, HVG-ORAC, Budapest, 2015.

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The newest reservations can also be found in this subject category, which are not yet in force at the time of writing. In the frame of the Organization for Economic Cooperation and Development (OECD) the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (shortly known as Multilateral BEPS Convention) has been accepted and it enters into force in July 2018. Hungary has not yet ratified it, but at the time of signature it has already introduced the longest list of reservations and declarations, covering 27 pages.⁶⁰

17.7 CONCLUSIONS

Reservation to multilateral treaties is a complex legal institution, which has generally been applied for more than one hundred years. Keeping track of the reservations is a challenging act, since the international registries can be trusted significantly more than the Hungarian promulgating norms. The detailed analysis of many of the reservations in this study shows that several of the problems addressed by the ILC Guide on reservations occurred or occurs in the legal practice of states and namely, of Hungary. Such issues cover the event of state succession, the legal effects of an objection, the difference between an interpretative declaration and a reservation, the qualification of a declaration as reservation, the promulgation of treaties and reservations made to it, the possibility of withdrawal of declarations, and the changing nature of political reasons behind a reservation.

Hungary, as all other states, had and has practiced the right to reservation from time to time to protect her real or imagined interests, let it be political or legal. Nevertheless, these interests and life behind it is always changing. Many of the here criticized reservations were accepted in the midst of the Cold War, based upon socialist alliance with the Soviet Union or the socialist system of law. Even though there was an examination and “package-withdrawal” of reservations during the change of regime in 1989 and 1990, still a significant residue exists. Hungary did not and does not abundantly make reservations, but it could be even less if a systematic evaluation would be made again by the Ministry of Foreign Affairs and the obsolete ones would be withdrawn.

60 BEPS MLI Position – Hungary – Status of List of Reservations and Notifications at the Time of Signature: <http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf>.