

## Reservations to the Convention on the Rights of the Child from the perspective of international law

Djagham Mohamed\*, Biskra University, Algeria, mohamed.djagham@hotmail.com

Dahmouche faiza<sup>2</sup>, Biskra University, Algeria, f.dahmouche@univ-biskra.dz

Send Article Date: 09 /01/2022 Date of acceptance of the article: 03/03/2022 Publication date: 06/06/2022

### المخلص:

أصبحت حقوق الطفل في السنوات الأخيرة مركزا للجهود الحكومية، والبيّن حكومية، والغير حكومية على حد سواء وهو ما ساهم في إنشاء ترسانة من النصوص الضامنة لحقوق الطفل، تتقدمها اتفاقية حقوق الطفل 1989 التي تشكل شرعة حقيقة لحقوق الطفل باعتبارها حصيلة للتراكمات القانونية والسياسية السابقة لها، كما أن اتفاقية حقوق الطفل تمتاز بالعالمية حيث صادقت عليها كل دول العالم ماعدا الولايات المتحدة الأمريكية، ستحاول الدراسة التعمق في خصوصية التحفظ على اتفاقيات حقوق الإنسان بصفة عامة، والإشكاليات المرتبطة بحقوق الطفل بصفة خاصة باعتبارها الاتفاقية الدولية التي ورد عليها العدد الأكبر من التحفظات.

### Abstract:

In recent years, the rights of the child have become the focus of governmental inter governmental and non-governmental efforts. This has contributed to the creation of an arsenal of texts guaranteeing the rights of the child. The 1989 Convention on the Rights of the Child, which constitutes a genuine bill of the rights of the child as a result of its previous legal and political accumulation. The Convention on the Rights of the Child is a universal one, ratified by all countries except the United States of America, will try to study in depth the specificity of the reservation to human rights conventions in general, and the problems associated with the rights of the child in particular, as the international convention to which the largest number of reservations have been received.

**key words:** Child rights, reservation, universality.

### Introduction:

Historical development and doctrinal accumulation have contributed to the formulation of human rights in legal terms that prevent any prejudice to the person's dignity, the Universal Declaration of Human Rights represents a transition of human rights from national privacy to universality, the adoption of the International Covenants and subsequent documents was also an act of universality, as international conventions transferred rights from general to specialized and from non-binding to binding. Some treaties have also attempted to address gross and systematic violations of human rights such as genocide, torture, disappearance, and apartheid, including special care for groups most vulnerable to violations of their rights "refugees, migrants, children, women and minorities".

---

\* Djagham Mohamed

In recent decades, international attention to the promotion and protection of the rights of the child has increased. Since the 1959 Declaration on the Rights of the Child, an ethical reference point in this area, steps have been accelerated to devise binding international standards, resulting in the adoption of the Convention on the Rights of the Child, 20 November 1989.

The departure of human rights from the reserved sphere of the State does not mean the end of its role in the realization and fulfillment of universal human rights standards. The State had extensive freedom of action in dealing with its international human rights obligations, also the optional nature of international human rights law allowed the State to ratify with reservations and interpretative declarations, which could empty international texts from their substance to make universality enshrined in international documents merely non-binding slogans.

the reason behind the excessive resort to formal ratification is the imperative of joining the international human rights system in the context of the globalization of human rights, but the problem is that most third world States have had limited or no participation in the creation of international human rights instruments. States, therefore, find themselves faced with both difficult options, either to remain outside the Convention or to ratify without its implementation at the domestic level, especially since States reluctant to ratify find themselves in the situation of a potential human rights offender. That's why this study will try to answer the question: How has the specificity of reservations to the Convention on the child's rights affected their universal application?

### **THE FIRST TOPIC: The legal issues of reservations to human rights conventions**

Human rights norms are the texts and principles contained in international human rights conventions and other sources of international law relevant to human rights that aim to support, promote or protect rights or establish international responsibility in case of violation, the norms of international human rights law are distinct from other branches of public international law, this legal specificity has contributed to the complexity of the regime of reservations in the field of human rights, as it establishes an objective system that gives rise to non-reciprocal obligations and erga omnes, also, some norms live up to jus cogens status.

### **FIRST REQUIREMENT: the Specificity of reservations to human rights conventions**

A reservation is a statement made by a State participating in a treaty expressing its desire to derogate from or amend one of its provisions. A reservation based on the Vienna Convention on the Law of Treaties, which it regulates by articles 19 to 23, means a unilateral declaration, whatever its wording or designation, made by a State at the time of ratification, signature, acceptance, consent, or accession to a treaty, which is intended to exclude or modify the legal effect of certain provisions of the treaty in relation to its applicability.<sup>1</sup>

In principle, reservations are aimed at balancing the State's independence and sovereignty with its membership in the international community. Reservations are aimed at reconciling universality and particularity in a multi-civilizational world. These dichotomies have created flexibility in the treatment of international human rights conventions by States, especially since

---

<sup>1</sup> - زغوم كمال، القانون الدولي المعاهدات والعرف، دار العلوم للنشر والتوزيع، الجزائر، 2004، ص 101

most States have not been parties to the core conventions, reservations help to gather the largest number of signatures and ratifications and thus serve the collective idea of a treaty.<sup>2</sup>

The debate over the possibility and scope of reservations was due to the argument on the occasion of the adoption of the Convention on the Prevention of Genocide, which was the subject of an advisory opinion of the International Court of Justice, and the General Assembly of the United Nations had invited the Commission on Human Rights to include a provision on reservations in the draft International Covenant on Civil and Political Rights at that time, which had led to ongoing controversy within the Commission and the Third Committee of the General<sup>3</sup>.

The reason was the absence of an explicit provision regulating reservations to international human rights conventions as a special category of norms. Article 19 of the Vienna Convention on the Law of Treaties provided for general conditions for reservations:

- The reservation must be made at the time of signature, ratification, acceptance, approval and accession;
- The reservation should not be expressly prohibited in the treaty;
- The reservation should be specific;
- The reservation should not be incompatible with the object and purpose of the treaty.

The question is: How applicable are the rules governing reservations contained in the Vienna Convention on the Law of Treaties to human rights norms?

In the relevant literature, two groups argue for the need to establish a specific international treaty regulating the provisions of reservations to international human rights conventions because of their specificity and differentiation from other rules of general international law, while the second group argues for the applicability of the conditions contained in the Vienna Convention on the Law of Treaties, especially since the requirements of article 19 can be applied without difficulty to this category of treaties.

## **SECOND REQUIREMENT: The Conditions for reservations to human rights conventions**

Considering the process of discussion between States and international control bodies concerning the admissibility of reservations to human rights conventions, a set of formal and substantive requirements is necessary.

The formal terms can be summarized as: A reservation must be made to a special provision and a reservation of a general nature are prohibited if the reservation is contrary to law in force in the territory of the reserving State. The reservation contains a brief presentation of the law concerned. The reservation is made at the time of signature, ratification, acceptance, accession, or approval.

---

<sup>2</sup>-الحبيب حمدوني وحفيظة شقير، حقوق الإنسان للنساء بين الاعتراف الدولي وتحفظات الدول العربية، ط 1، مركز القاهرة لدراسات

حقوق الإنسان، 2008، ص 94

<sup>3</sup> -AnjaSeiber-Fohr, "The potentials of the Vienna convention on the law of treaties", in: **Reservation to human right treaties and the Vienna convention regime conflict harmony or reconciliation**, MartimusNihoff publishers, The Netherland, 2004, P 185□

The Substantive conditions: If a reservation is not incompatible with the object and purpose of the treaty, if it is not a reservation to jus cogens and customary norms, if it is not a reservation to core rights and if it is a temporary reservation<sup>4</sup>.

It should be noted that international human rights conventions have taken different positions in dealing with the issue of reservations, some expressly prohibited the reservations<sup>5</sup>, and the second group expressly accepted the reservation and prohibited it from certain special provisions.<sup>6</sup> Some conventions do not enter into force between the reserving State and the objecting State<sup>7</sup>, some conventions do not contain any text relating to reservations<sup>8</sup>, and some conventions specify precisely the conditions for reservations.<sup>9</sup> Undoubtedly, the fact that the vast majority of international human rights conventions allow reservations to their provisions is evidence of the need for the national role played by the State in the national realization of international human rights norms.<sup>10</sup>

It is impossible to prohibit reservations to human rights conventions entirely, despite the specificity of their norms, the article 60, paragraph 5, of the Vienna Convention on the Law of Treaties, states that these conventions are of a general nature whose reservation may impede the purpose of the Convention. Not all the rules contained in international human rights conventions are the same as jus cogens. Therefore, reservations are allowed within a narrow framework that does not affect the object of the Convention or the fundamental rights contained therein.<sup>11</sup>

But the question is: What can be done when the formal and substantive requirements of validity of reservations to human rights are met? The Special Rapporteur appointed by the International Law Commission to comment on the law and practice relating to reservations to treaties points out that in the event of non-acceptance of a reservation, a State may:

- Maintain its reservations after their substantive consideration;
- Withdrawal of reservations;
- Improving its status by replacing its reservation with one that is permitted;
- Withdrawal of membership from treaties.<sup>12</sup>

<sup>4</sup> عبد الله بونخل، **التحفظ على المعاهدات الدولية لحقوق الإنسان**، مذكرة ماجستير، قانون دولي عام، كلية الحقوق والعلوم السياسية، جامعة بسكرة، 2011، ص 76.

<sup>5</sup> الاتفاقية الاضافية بشأن الغاء الرق والتجارة في الرقيق 1956 المادة 9، والاتفاقية بشأن التمييز العنصري في مجال التعليم 1960 المادة 09

<sup>6</sup> الاتفاقية بشأن وضع للاجئين 1951 المادة 42، والاتفاقية بشأن وضع عديمي الجنسية 1945 المادة 38، والبروتوكول الخاص بوضع المرأة المتزوجة 1957 المادة 87.

<sup>7</sup> الاتفاقية المتعلقة بالحقوق السياسية للمرأة 1953 المادة 07.

<sup>8</sup> العهد الدولي للحقوق المدنية والسياسية 1966

<sup>9</sup> الاتفاقيات الاوربية لحقوق الإنسان م 46.

<sup>10</sup> محمد يوسف علوان، "بنود التحلل من الاتفاقيات الدولية لحقوق الإنسان"، ج 01، مجلة الحقوق، كلية الحقوق، جامعة الكويت، 1985، ص 136

<sup>11</sup> ليث الدين صلاح حبيب، "التحفظات الدولية على اتفاقيات حقوق الإنسان"، مجلة كلية القانون للعلوم القانونية والسياسية، جامعة كركوك، المجلد 2، العدد 04، 2013، ص 309

<sup>12</sup> الحبيب حمدوني وحفيظة شقير، مرجع سابق، ص 179

### THE THIRD REQUIREMENT: International practice in the field of reservations

It is clear that the process of dialogue between the regulatory organs and the State in the area of reservations is, in fact, a continuation of the negotiation process, but after the conclusion of the treaty, given that States that failed to impose their views during the negotiation process resort to reservations on matters approved by the majority. In a world made up of sovereign States, there is no harm in protecting their position, unless such a position is detrimental to human rights, and in fact the process of determining its damage is purely political that cannot be subject to legal logic.<sup>13</sup>

However, the problems of reservations to international human rights treaties are reflected in the large number and scope of reservations formulated by States, especially those of a general nature, which may impede the object and purpose of the treaty. However, these problems must not be seen solely in quantitative and numerical terms. It breaks up the obligation of the treaty, thereby stripping international protection of its content and fragmenting the conventional nature to which the Treaty aspires.<sup>14</sup>

In fact, the system of reservations to human rights conventions is a "necessary evil." resorting to incomplete obligations is better than non-compliance at all. The task of establishing a formal and objective regime governing the specificity of reservations to these conventions has been entrusted to regulatory bodies at the global and regional levels. These control bodies have relied on special rules and criteria for determining the validity of reservations in order to balance the legal specificity of these norms with the sovereign right of the State bound by them.<sup>15</sup>

also the proliferation of reservations is not always seen as evidence of non-compliance with international obligations, and vice versa, the comparative study of the practice of reservations between the European-American and African regional regimes has shown that the lack of reservations does not necessarily mean strict adherence to the substantive norms of the treaty, it could be evidence that States do not take the treaty seriously, which is clearly reflected in the African Charter on Human Rights, for which only two reservations have been made, but has no tangible implications compared to the American the reservation could therefore be evidence of a State's genuine will to accommodate its domestic system in order to be more consistent with its international obligations<sup>16</sup>

This idea is not generalizable, exaggerated reservations could undermine the effectiveness of the human rights treaty system, becoming a set of non-binding formal texts, especially within the framework of the human rights treaty regime of "Acceptance and objection," which is recognized by the Vienna Convention on the Law of Treaties concerning reservations, the

---

<sup>13</sup> - Jan Klabbbers, "On human right treaties contractual conceptions and reservations", in: **Reservation to human right treaties and the Vienna convention regime conflict harmony or reconciliation**, Op cit, PP 181-182

<sup>14</sup> - محمد خليل الموسى، "التحفظات على أحكام المعاهدات الدولية لحقوق الإنسان"، مجلة الحقوق، كلية الحقوق، جامعة الكويت، العدد 03، 2002، ص 346

<sup>15</sup> - كرعلي مصطفى، التحفظ في ظل القانون الدولي لحقوق الإنسان، مذكرة ماجستير، القانون الدولي لحقوق الإنسان، كلية الحقوق والعلوم التجارية، جامعة بومرداس، 2006، ص 108

<sup>16</sup> - Susan Marks, "Three regional human right treaties and their experience of reservation", in: **Human rights as general norms and a state's right to opt out, reservations and objections to human rights conventions**, 1<sup>st</sup> edition, G P Gardner editions, UK, 1997, P 61.

declaration and programme of Action of the Vienna Conference of 1993 warned against excessive resort to reservations, requested States to examine the scope of their reservations so as not to conflict with the object and purpose of the Convention, and encouraged States to withdraw their reservations if necessary.<sup>17</sup>

## **THE SECOND TOPIC :The Dialectic of the Reservation to the Convention on the Rights of the child**

State sovereignty regains all the rights to modulate the scope of the commitments made, in condition that it does not distort the “purpose and object” of the treaty. Within the limits of this principle, which is itself rather vague, the scope for maneuver of the States is very wide to formulate reservations and “interpretative declarations” at the time of signature or ratification. The difference between the two related concepts has long been the subject of controversy, although it now appears to be rationalized by the work of the International Law Commission, the nominalism being called into question to take into account the impact of the clause on commitments: in other words, a “declaration” can be considered, by its effects, as a reserve and vice-versa.<sup>18</sup>

### **FIRST REQUIREMENT: The genesis and content of the Convention**

“Categorical rights” appear in some cases as a way of taking into account the vulnerability of certain groups to guarantee the true effectiveness of the rights proclaimed as universal on an equality basis. Thus, the recognition of the rights of the child is a way of taking note of their particular vulnerability to reaffirm, on the one hand, that they enjoy the totality of human rights (right to respect for private and family life, right to a name and nationality, freedom of thought and religion, right to health, right to education, etc.) and, on the other hand, that they must be given the specific protection they need because of their minority (protection against violence, including sexual violence, ill-treatment, exploitation, etc.)<sup>19</sup>

The Convention was born in 1979 when it began to be believed that there could be an international consensus to formulate the rights of the child in a binding international convention, where a working group met, pointed by the former Commission on Human Rights, composed of 43 representatives of States, as well as delegations of intergovernmental and non-governmental organizations, the Group worked in a consensual manner, avoiding the confrontation by not adopting the method of voting on project proposals. The editors of the Convention sought, through research, consultation and compromise, to reach the common denominator of different cultures.<sup>20</sup>

---

<sup>17</sup>-G Cohen- Jonathan, « **Universalité et singularité des droits de l’homme** », Revue trimestrielle des droits de l’homme, éditions anthémis, 2003, N° 52, 2003.p08

<sup>18</sup>-Emmanuel Decaux, **universalité des droits de l’homme et pluralité interprétative : l’exemple des droits de l’enfant**, disponible sur : <https://books.openedition.org/cdf/1497?lang=fr#notes>

<sup>19</sup>-DannielLochak, « **Penser les droits catégoriales dans leur rapport à l’universalité** », La revue des droits de l’homme, Centre de recherche et d’étude sur les droits fondamentaux, N°03 ,2013, P 05

<sup>20</sup> - Pierre Martaguet, « **La convention internationale des droits de l’enfant** », Enfance, presse universitaire de France ,Vol 43, N° 1, 1990, P 130□  
2029



On the occasion of the thirtieth anniversary of the Declaration on the Rights of the Child and the tenth anniversary of the International Year of the Child, the United Nations General Assembly adopted the Convention on the Rights of the Child, was presented for signature, accession, and ratification on 20 November 1989 and entered into force 11 months later.

The text of the Convention was a genuine bill of the rights of the child, characterized by the grouping of the rights of the child in international documents in a concise and clear text. More than 80 conventions containing child-specific provisions could be numbered, but the texts were often fragmentary and contradictory, the 1989 Convention is distinct from its predecessor. In addition to providing protection for the child, it recognizes the child as the holder of economic, social, cultural, civil and political rights.<sup>21</sup>

The rights contained in the Convention on the Rights of the Child can be divided into three groups: Group I: Attention is given to the child's relationship with the State, public freedoms, education, health and international risks (arts. 06, 07, 08, 10, 11, 12, 13, 15, 17, 22 to 32 and 38). Second group: Care for the child's relationship with his or her family (arts. 22, 23, 5, 19, 14, 16 and 18). Third group: Describes the difficulties a child may face (articles 19, 21, 23 through 36 and 40), calls for solutions and precautions (articles 33, 29, 30, 37 and 39).<sup>22</sup>

Since the Convention on the Rights of the Child deals with civil and political rights as well as economic, social and cultural rights, it deals with the jurisdictional requirement in article 02/01: "Guaranteed to every child under its jurisdiction," but abandoned the requirement of jurisdiction when speaking of economic, social and cultural rights (art. 04/01) within the framework of international cooperation, thus giving a universal dimension in application even if it was limited to economic, social and cultural rights.<sup>23</sup>

## **SECOND REQUIREMENT: The specificity of the reservation to the Convention on the Rights of the child**

As of 6 March 2020, the closing date of the eighty-fourth special session of the Committee on the Rights of the Child, there were 196 States parties to the Convention on the Rights of the Child. Thus, the Convention is the largest human rights instrument in terms of the number of ratifications, and only ratification by the United States of America remains for the Convention to become fully universal.<sup>24</sup>

Of the 196 States that have ratified the Convention on the Rights of the Child, more than 66 (over one third) have filed reservations or interpretative declarations. The reservations affect 29 of the 40 substantive articles contained in the Convention. The provisions most often mentioned by States are Article 14 (freedom of thought, conscience and religion; 17 States); Article 21 (national and international adoption; 13 States); Article 7 (registration at birth, right to a name and nationality, right to know and be raised by parents; 12 States). 10 States have

---

<sup>21</sup> --Carmen Lavallee, « **La convention internationale des droits de l'enfant: son application au Canada** », *Revue internationale des droits comparé*, société de législation comparé, Vol 48, N° 3, 1996, P 609.

<sup>22</sup> - Thierry Fossier et Dominique Guihal, « **à propos de la convention internationale des droits de l'enfant** », *Revue juridique de l'ouest*, l'institut de l'ouest:droit et Europe, Vol 03, N° 4,1990, P 574

<sup>23</sup> -Malcom Langford and others, **Extraterritorial duties in international law**, in global justice, state duties, Cambridge university press, UK, 2013,p58

<sup>24</sup>. An updated list of States that have signed, ratified or acceded to the Convention can be found on the website <http://treaties.un.org>

expressed a general reservation, to indicate that their internal order would prevail over the Convention.<sup>25</sup>

For African countries, the use of reserves is relatively moderate (only 9 out of 52 reservation/declaration, while one third of the States Parties to the Convention have issued one). If experience shows that full accession to a treaty does not imply a desire to respect it, the reservation is always intended to restrict the scope of a text, by limiting or even excluding the legal effect of its provisions.<sup>26</sup>

the Convention on the Rights of the Child provides for the possibility for States to formulate reservations at the time of ratification or accession, while expressly excluding those incompatible with the object and purpose of the treaty, Article 51 of the Convention stipulates: "The Secretary-General of the United Nations shall receive and communicate to all States the text of reservations made by States at the time of ratification or accession. 2. No reservation incompatible with the object and purpose of this Convention shall be permitted. 3. Reservations may be withdrawn at any time by notification addressed to the Secretary-General of the United Nations, who shall inform all States Parties to the Convention thereof. The notification shall take effect on the date on which it is received by the Secretary-General."

For the purposes of assessing the validity of reservations, the object and purpose of the treaty means the basic provisions of the treaty that represent the purpose of its existence, In order to determine the object and purpose of the treaty, the entire treaty must be interpreted in good faith, in accordance with the ordinary meaning given to the terms of the treaty in the context in which it appears. To that end, the context includes the preamble and annexes. In addition, preparatory work and the circumstances under which the treaty was concluded may be used, in particular the title of the treaty, and when appropriate, with the articles defining their general structure and subsequent practice of the parties.<sup>27</sup>

### **THE THIRD REQUIREMENT: The motives for reservations to the Convention on the Rights of the child**

There are many reasons for reservations to human rights conventions, the legal regimes differ in their treatment of the reservations. There are States that formulate reservations to harmonize their international obligations with the national legislative system. Some States considered that their national laws provided optimal protection in comparison with the text of the convention; some States had reservations in response to their economic situations that did not enable them to fulfill their obligations, some States reserved for preventive reasons.<sup>28</sup>

The State ratifying the Convention on the Rights of the Child need not necessarily alter its laws, structures or traditions; but he is expected to be constructive and to adjust or modify those

---

<sup>25</sup>-Marie-Francoise Lucker Babel, **les réserves aux convention des nations unies relative aux droit de l'enfant et la sauvegarde de l'objet et du but du traité internationale**, article basé sur une conférence donné e a l'institut international des droit de l'enfant, Sion(Valaise ,Suisse),1996.p666.

<sup>26</sup>-Napoli Claudia. **La Convention relative aux droits de l'enfant 20 ans après : obligations et mise en oeuvre sur le continent africain**. In: *Revue juridique de l'Ouest*, 2009-2. pp. 169-187;

<sup>27</sup> -Alain pellet, reservation to conventions, <https://legal.un.org/ilc/reports/2008/arabic/chp6.pdf>

<sup>28</sup> - محمد يوسف علوان ومحمد خليل الموسى، القانون الدولي لحقوق الإنسان لحقوق المحمية، الجزء الثاني، ط1، دار الثقافة

للنشر والتوزيع، عمان، 2009، ص39.



elements of his law which do not comply with the requirements of the said Treaty. Whether in some of its principles or in some of its details it deals with may nevertheless be in contradiction with norms or values which a State deems important or not subject to change, the reservation appears to be a temporary measure to allow the state to rectify its laws to be more in alliance with the treaty.<sup>29</sup>

In the area of human rights, reservations formulated with a view to maintaining the application of domestic law, the response to this issue seems more precise than many peremptory assertions would suggest: It seemed impossible to deny a State the right to formulate a reservation designed to preserve the integrity of its domestic law if the State nevertheless respected the object and purpose of the treaty. Reservations relating to the application of domestic law should not be confused with vague and general reservations that were not allowed other parties, by their nature, to understand and assess them. Needless to say, these reservations run counter to the purpose of the treaty.<sup>30</sup>

Religious and cultural specificities contrary to so-called universal values have inspired most reservations and interpretative declarations. Reservations and declarations are specifically directed at articles of the Convention (in particular articles 14, 16, 20 and 21) which are considered incompatible with Islamic precepts or traditional African values. Cultural specificities can be found in the resistance generated by Article 16, which deals with the intimacy and reputation of the child (notions foreign to African traditions), an article that has been the subject of an interpretative declaration by Algeria and the Mali reservation.<sup>31</sup>

The economic situation of third-world countries has also contributed to the formation of legal policies for dealing with reservations to the Convention on the Rights of the Child. These situations have led them to make reservations on the number of provisions of the Convention, in order to eliminate the additional financial burdens and costs imposed on them, especially when it comes to the economic and social rights of the child, such as free education, which imposes positive obligations on the State which lacks the financial resources necessary for the realization of this right.<sup>32</sup>

### Conclusion :

The International Convention on the Rights of the Child is universal, as it is inspired by the principal texts of the United Nations. In addition, it focuses on the inherent dignity of all members of the human family, especially children, because of their mental and physical immaturity. The objectives of the Convention are to prepare and raise children in the values of peace, tolerance, fraternity and freedom. It also explicitly recognizes cultural diversity and, taking due account of the importance of each people's traditions and cultural value for the protection of the child. It allowed a "Discretionary margin" for States in their application of rights through which they can realize their cultural specificity.

The editors of the Convention have tried to move away from ethnocentrism and refer to cultural diversity in several locations of the Convention, in condition that these cultural characteristics are not incompatible with what the Convention calls the "best interests of the child", although most of the rights contained in the Convention are universal and applicable to

---

<sup>29</sup> -Marie-Francoise Lucker Babel, op cit, p665.

<sup>30</sup>-Alain Pellet, reservation to conventions, <https://legal.un.org/ilc/reports/2008/arabic/chp6.pdf>

<sup>31</sup> -Napoli Claudia, op cit, p171.

<sup>32</sup> - محمد يوسف علوان ومحمد خليل الموسى، المرجع السابق، ص 41.

different cultures, we find some rights subject to different interpretations based on local cultures, customs and traditions of peoples.

In a multicultural world reservations seek to gather the largest number of signatures and ratifications and thus serve the collective character of the treaty, the system of reservation to human rights conventions is a "necessary evil." resorting to incomplete obligations is better than no commitment at all. Actual practice has shown that the reservation is linked to the will and good will of the State. At the same time, the large number of reservations to a particular convention may be sufficient for the State to escape the effective application of the provisions of the Convention or, conversely, may be evidence of a State's genuine desire to be bound by the contents of the treaty.

The Convention on the Rights of the Child expressly allowed States to formulate reservations provided that they were incompatible with the object and purpose of the treaty, which made it a universally ratified convention, except in the United States, but at the same time it was the Convention to which the largest number of reservations and interpretative declarations had been received, especially in view of the terminological ambiguity regarding the object and purpose of the Convention and the effect of multiculturalism on the application of children's rights at the national level.

#### **Bibliography List setting:**

##### **-First: legal texts**

- الاتفاقية الإضافية بشأن إلغاء الرق والتجارة في الرقيق المادة 9، والاتفاقية بشأن التمييز العنصري في مجال التعليم 1960
- الاتفاقية بشأن وضع للاجئين 1951 المادة 42، والاتفاقية بشأن وضع عديمي الجنسية 1945 المادة 38، والبروتوكول الخاص بوضع المرأة المتزوجة 1957 .
- الاتفاقية المتعلقة بالحقوق السياسية للمرأة 1953.
- العهد الدولي للحقوق المدنية والسياسية 1966
- الاتفاقيات الأوروبية لحقوق الإنسان .

##### **-Second: books**

- زغوم كمال، القانون الدولي المعاهدات والعرف، دار العلوم للنشر والتوزيع، الجزائر، 2004.
- الحبيب حمدوني وحفيظة شقير، حقوق الإنسان للنساء بين الاعتراف الدولي وتحفظات الدول العربية، ط1، مركز القاهرة لدراسات حقوق الإنسان، 2008.
- محمد يوسف علوان ومحمد خليل الموسى، القانون الدولي لحقوق الإنسان لحقوق المحمية، الجزء الثاني، ط 01، دار الثقافة للنشر والتوزيع، عمان، 2009.

-AnjaSeiber-Fohr, "The potentials of the Vienna convention on the law of treaties", in: **Reservation to human right treaties and the Vienna convention regime conflict harmony or reconciliation**, MartimusNihoff publishers, The Netherland, 2004.

- Jan Klabbers, "On human right treaties contractual conceptions and reservations", in: **Reservation to human right treaties and the Vienna convention regime conflict harmony or reconciliation**.

-Susan Marks, "Three regional human right treaties and their experience of reservation", in: **Human rights as general norms and a state's right to opt out, reservations and objections to human rights conventions**, 1<sup>st</sup> edition, G P Gardner editions, UK, 1997.

-Malcom Langford and others, **Extraterritorial duties in international law**, in global justice, state duties, Cambridge university press, UK, 2013.

-Marie-FrancoiseLucker Babel, **les réserves aux convention des nations unies relative aux droit de l'enfant et la sauvegarde de l'objet et du but du traité internationale**, article basé sur une conférence donné e a l'institut international des droit de l'enfant, Sion(Valaise ,Suisse),1996.

#### **-Third: memory**

-عبد الله بونخل، **التحفظ على المعاهدات الدولية لحقوق الإنسان**، مذكرة ماجستير، قانون دولي عام، كلية الحقوق والعلوم السياسية، جامعة بسكرة، 2011.

- كرعلي مصطفى، **التحفظ في ظل القانون الدولي لحقوق الإنسان**، مذكرة ماجستير، القانون الدولي لحقوق الإنسان، كلية الحقوق والعلوم التجارية، جامعة بومرداس، 2006.

#### **-Fourth: Articles**

-محمد يوسف علوان، "بنود التحلل من الاتفاقيات الدولية لحقوق الإنسان"، ج 01، مجلة الحقوق، كلية الحقوق، جامعة الكويت، 1985.

-ليث الدين صلاح حبيب، "التحفظات الدولية على اتفاقيات حقوق الإنسان"، مجلة كلية القانون للعلوم القانونية والسياسية، جامعة كركوك، المجلد 2، العدد 04، 2013.

-حمد خليل الموسى، "التحفظات على أحكام المعاهدات الدولية لحقوق الإنسان"، مجلة الحقوق، كلية الحقوق، جامعة الكويت، العدد 03، 2002.

- G Cohen- Jonathan, « **Universalité et singularité des droits de l'homme** », Revue trimestrielle des droits de l'homme, éditions anthémis, 2003, N° 52, 2003.

DannielLochak, « **Penser les droits catégoriales dans leur rapport à l'universalité** », La revue des droits de l'homme, Centre de recherche et d'étude sur les droits fondamentaux, N°03, 2013.

- Pierre Martaguet, « **La convention internationale des droits de l'enfant** », Enfance, presse universitaire de France ,Vol 43, N° 1, 1990.

Carmen Lavalée, « **La convention internationale des droits de l'enfant: son application au Canada** », Revue internationale des droits comparé, société de législation comparé ,Vol 48, N° 3, 1996.

- Thierry Fossier et Dominique Guihal, « **à propos de la convention internationale des droits de l'enfant** », Revue juridique de l'ouest, l'institut de l'ouest:droit et Europe, Vol 03, N° 4,1990.

Napoli Claudia. **La Convention relative aux droits de l'enfant 20 ans après : obligations et mise en oeuvre sur le continent africain**. In: Revue juridique de l'Ouest, 2009.

#### **-Fifth: Websites**

-Emmanuel Decaux, **universalité des droits de l'homme et pluralité interprétative : l'exemple des droits de l'enfant**, disponible sur : <https://books.openedition.org/cdf/1497?lang=fr#notes>

-An updated list of States that have signed, ratified or acceded to the Convention can be found on the website <http://treaties.un.or>

-Alain pellet, reservation to conventions, <https://legal.un.org/ilc/reports/2008/arabic/chp6.pdf>