Restriction on Human rights

- Reservations to treaties
- Declaration
- Derogations from rights
- Express limitations to rights

1. Reservations

- A statement made by a state by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state
- **It** enable a state to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in
- Article 19 of VC on the Law of Treaties which sets out the general rule on reservations

Con..

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

a. The reservation is prohibited by the treaty;

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

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

See also Article 20(5)VCLT): other state role,

Con.....

- Reservations should be formulated ‘as precisely and narrowly as possible (UN HRComssion Resolution 1998/9).
- Extensive limitations may contravene established principles of international law contrary-Article 27 VCLT
- Article 57(1) of the ECHR prohibits reservations ‘of a general character’

Con..

- It is not always easy to distinguish a reservation from a declaration as to a States's understanding of the interpretation of a provision, or from a statement of policy. Regard will be had to the intention of the State, rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation.
- Conversely, if a so-called reservation merely offers a State's understanding of a provision but does not exclude or modify that provision in its application to that State, it is, in reality, not a reservation.

2. Declarations

- Some conventions allow or even require states parties to make declarations concerning the extent to which they are bound by a certain provision.
- A state party may also make interpretative declarations, otherwise known as understandings, whereby it does not intend to modify or limit the provisions of the treaty, but indicates merely how it interprets a particular article.
- One of the major differences between a ‘reservation’ and an ‘interpretative declaration’ lies in the author’s purpose in making that declaration.
- While a reservation seeks to exclude or modify the legal effect of the treaty’s provisions in their application to the state author, the interpretative declaration seeks only to clarify the meaning or scope of the treaty provisions.

Derogations From Rights

- Some human rights instruments allow states to take measures derogating temporarily from some of their obligations.
- Rationale for derogation provisions is to strike a balance between the sovereign right of a government to maintain peace and order during public emergencies, and the protection of the rights of the individual from abuse by the state.
- The state is allowed to suspend the exercise of some rights when necessary to deal with an emergency situation (*e.g.*, derogation of the right to peaceful assembly), provided it complies with safeguards against any abuse of these

When derogation measures are allowed, such derogations have to meet several criteria:

- There must be a war or general state of emergency threatening the life of the nation;
- The state of emergency must be officially proclaimed;
- Measures may not go beyond the extent strictly required by the situation;
- Measures may not be inconsistent with other obligations under international law; and
- Measures may not be discriminatory solely on grounds of race, colour, sex, language, religion or social origin.

Non derogable rights:

- Article 4(2) of ICCPR, Article 15(2) of ECHR and Article 27(2) of ACHR)- *notstandsfest*- include
- ✓ The right to life
- ✓ Freedom from slavery
- ✓ Torture and imprisonment for debt,
- ✓ The principle of legality in the field of criminal law,
- ✓ Freedom of thought,
- ✓ Conscience and religion
- ✓ The right to juridical personality.

Con….

- A derogation measures are only allowed in exceptional circumstances and should be of temporary nature.
- Only in a situation when the “life of the nation” is at stake, States may unilaterally derogate from some of its obligations.
- Exceptional circumstances
- Non-derogable rights
- Strictly required – proportionality
- Temporary
- Procedure – international and domestic
- Applicable law during emergencies: Humanitarian law and international criminal law and parts of international human rights law

In *Greece v. the UK* the Commission and the Court developed the criteria for scrutiny:

- It must be actual or imminent.
- Its effects must involve the whole nation.
- The continuance of organized life in the community must be threatened
- The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of pubic safety, health and order, are plainly inadequate.

Limitation to Rights

Art. 4 ICESCR provides: “.., the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

- Balance of legitimate interests
- No time limitations
- Strict interpretation
- Must be necessary in a democratic society – “margin of appreciation”
- Proportionality

Permissible limitations

Criteria:

1. **Lawful:** “in accordance with the law” or “prescribed by law”-What s considered to be “law” should not be given a restrictive interpretation. It includes, “common law” and administrative regulations and international treaties.

- “clear, accessible, precise and foreseeable” without being “excessive rigidity” (*The Sunday Times*, Judgment of 26 April 1979, A.30, para. 49).

2.Legitimate: **aims** listed in the provisions

- Some difference in aims in different provisions. BUT generally broadly worded
- Examples of aims in the case law of ECHR:
- “national security”
- “public safety”
- “public order”
- “prevention of crimes”
- “morals”
- “health”
- “the reputation of others”
- “the protection of the rights of others”
- “the economic welfare of the country”
- “the prevention of disclosure of information received in confidence”
- “the guaranteeing of the impartiality of the judiciary”
- “the prevention of disorder and crime”

Necessary in a democratic society

- “Not synonymous with “indispensable” … neither has it the flexibility of such expressions as “admissible”, “ordinary”, “useful”, “reasonable”, or “desirable”.
- The ECHR has interpreted this requirement as a “pressing social need”, and proportionality is required in relation to the stated aim