# ARTIKELEN

## ASSESSING THE VALIDITY OF RESERVATIONS TO INTERNATIONAL HUMAN RIGHTS TREATIES THROUGH THE LENS OF THE INTERNATIONAL COURT OF JUSTICE

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*This article looks at the issue of the validity of reservations to international human rights treaties through the lens of the International Court of Justice (ICJ or Court). A broader perspective is created by comparing the respective positions adopted by other international bodies, such as the European Court of Human Rights (ECtHR), the Human Rights Committee (HRC), and the International Law Commission (ILC or Commission). In its 1951 advisory opinion in the Reservations to the Genocide Convention the Court provided a general legal framework on the issue of the validity of reservations to multilateral treaties. A proper understanding of that opinion and the subsequent practice of the human rights courts and quasi-judicial bodies has been essential with regard to informing and guiding the Commission in its work on this topic and during the preparation of its forthcoming 'Guide to Practice'.*

### 1 Introduction

The issue of State reservations to multilateral treaties in general and to human rights treaties in particular has attracted considerable scholarly attention.[1] Further, in view of their effect on the enjoyment of internationally agreed human rights standards and considerable influence on international relations, it is obvious why different international bodies have had to deal

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1 This article develops further a point dealt with briefly in this author's PhD dissertation. See G. Zyberi, *The Humanitarian Face of the International Court of Justice: Its Contribution to Interpreting and Developing International Human Rights and Humanitarian Law Rules and Principles*, School of Human Rights Research Series, Vol. 26, Antwerpen-Oxford-Portland: Intersentia, 2008, pp. 396-397. See *inter alia* I. Ziemele (ed.), *Reservations to Human Rights Treaties and the Vienna Convention Regime: Conflict, Harmony or Reconciliation*, Leiden/Boston: Martinus Nijhoff Publishers, 2004; C.J. Redgwell, 'Reservations to Treaties and Human Rights Committee General Comment No. 24 (52)', *International and Comparative Law Quarterly (ICLQ)*, Vol. 46, 1997, pp. 390-412; R. Barata, 'Should Invalid Reservations to Human Rights Treaties be Disregarded?', European Journal of International Law (EJIL), Vol. 11, No. 2, 2000, pp. 413-425; K. Korkelia, 'New Challenges to the Regime of Reservations under the International Covenant on Civil and Political Rights', *EJIL*, Vol. 13, No. 2, 2002, pp. 437-477; R. Goodman, 'Human Rights Treaties, Invalid Reservations', and State Consent, *American Journal of International Law (AJIL)*, Vol. 96, 2002, pp. 531-560; R. Moloney, 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent', *Melbourne Journal of International Law*, Vol. 5, 2004, pp. 155-169; I. Boerefijn, *Reservations to Human Rights Treaties* (draft paper submitted to the International Law Association Committee on International Human Rights Law and Practice), Sienna, 9-11 November 2007, 30 pp. (on file with the author).

with this issue in the course of their work.[2] However, our main focus remains on the relevant case law of the ICJ, namely the Advisory Opinion of 28 May 1951 on the *Reservations to the Genocide Convention* and the Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma of 3 February 2006 in the *Armed Activities on the Territory of the Congo* case.[3] The approach of the ICJ in assessing the validity and legal effect of reservations to international human rights treaties is discussed first. In conjunction with that, the effect of the customary nature of certain treaty provisions on reservations thereto is also dealt with briefly. Subsequently, we shall look at the interaction between the ICJ and other bodies on the issue or reservations. At the end of the article follow some concluding remarks on the influence of the practice developed by all these international bodies in the work of the ILC on 'Reservations to Treaties' in preparation of its forthcoming 'Guide to Practice'.

## 2 ICJ's Approach to Reservations to International Human Rights Treaties

Differing views and State practice existed on reservations to multilateral treaties in 1950, time when a number of questions on this issue were referred to the Court by the General Assembly (GA).[4] Further, the role of the Secretary-General of the United Nations as depositary of treaties was largely unclear. Although the legal regime of reservations to treaties was largely regulated under the 1969 Vienna Convention on the Law of Treaties (VCLT),[5] a number of related issues still remain open. Unsurprisingly, State reservations to international human rights treaties are an issue of serious concern, since a number of them seem to defy outright the object and purpose of the treaty, thus making its ratification practically moot.[6] In this regard, potentially,

2 For the purposes of this article it bears mentioning two cases by the ICJ, namely *Reservations to the Genocide Convention*, and *Armed Activities on the Territory of the Congo*, and two cases by the ECtHR, namely the cases *Belilos v. Switzerland* and *Loizidou v. Turkey*. The ILC is continuing its work on the topic of 'Reservations to Treaties', which it started in 1993. That is expected to result in the adoption by this Commission of a 'Guide to Practice', which, although not binding, would be of assistance for the practice of States and international organizations.

3 For the abovementioned opinion see ICJ, *Case Concerning Armed Activities on the Territory of the Congo* (New Application: 2002) (Democratic Republic of the Congo *v.* Rwanda), Jurisdiction of the Court and Admissibility of the Application, Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, 3 February 2006, available at: http://www.icj-cij.org/docket/files/126/10441.pdf (last accessed on 12 September 2008) and *Reservations to the Convention on Genocide*, Advisory Opinion of 28 May 1951, ICJ Reports 1951, p. 15.

4 With regard to the practice on reservations to treaties at the time the General Assembly asked for the advisory opinion on *Reservations to the Genocide Convention* two different approaches were present, namely the European and the Pan-American Union approach. According to the first one, a State could not be a party to a treaty if reservations made with respect to it were not accepted by the other signatory States to the relevant convention. The Pan-American Union approach had the advantage of permitting a maximum number of States to become parties to a convention, although some of them could do so subject to reservations to certain parts of the relevant convention. For more details see Report of the Secretary General, Reservations to Multilateral Conventions, UN Doc. A/1372, 20 September 1950.

5 See section on Reservations at Part II, Section 2, of the Vienna Convention on the Law of Treaties, in *International Law Documents*, M.D. Evans (ed.), 6th edition, Oxford University Press, 2003, pp. 126-128.

6 See *inter alia* L. Lijnzaad, *Reservations to UN Human Rights Treaties: Ratify and Ruin?*, Dordrecht: Martinus Nijhoff, 1994.

the ICJ could clarify the issue of the legal effect of reservations to treaties, since five of the nine main human rights treaties include a compromissory clause bestowing jurisdiction upon this Court in case of disputes between States as to their interpretation or application.[7] Besides these five treaties, also the 1948 Genocide Convention contains such a dispute settlement mechanism. It bears mentioning that through its case law the Court has clarified the obligations of States under these international instruments *vis-à-vis* individuals under their jurisdiction.[8] Evidently, the approach adopted by the ICJ on the legal effect of reservations to treaties has important ramifications for the level of protection accruing to individuals under these international instruments.

Thus, in the 1951 advisory opinion in the *Reservations to the Genocide Convention* case the Court pointed out that, given the intention of the General Assembly was that as many States as possible become a party to this Convention, its object and purpose would limit both the freedom of making reservations and that of objecting to them.[9] Along with offering a rationale based on humane considerations for the making and objecting to reservations, the Court made the validity of reservations subject to the 'object and purpose' test. By focusing on the object and purpose of the Convention for purposes of assessing the validity of possible reservations, the Court directed attention to the very *raison d'être* of a human rights treaty, namely that of ensuring legal protection for individuals, categories of individuals, or groups of individuals *vis-à-vis* the State. This test puts certain limitations upon a State's prerogative to make reservations to a treaty. As the Court explained:

> 'It has nevertheless been argued that any State entitled to become a party to the Genocide Convention may do so while making any reservations it chooses by virtue of its sovereignty. The Court cannot share this view. *It is obvious that so extreme an application of the idea of State sovereignty could lead to a complete disregard of the object and the purpose of the Convention* (emphasis added).'[10]

While noting that a State cannot be bound without its consent in treaty relations, the Court moved towards restricting that very sovereign prerogative based on the consensual nature

7 The nine main international human rights instruments are the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984, the Convention on the Rights of the Child (CRC) of 1989, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) of 1990, the International Convention for the Protection of All Persons from Enforced Disappearance (CPPED) of 2006 and the Convention on the Rights of Persons with Disabilities (CRPD) of 30 March 2007. The last convention has recently entered into force, namely on 3 May 2008. From these human rights treaties CERD, CEDAW, CAT, CMW and CPPED (still to enter into force) include provisions referring disputes related to the interpretation or application of these treaties to the ICJ, respectively CERD in Article 22, CEDAW in article 29, CAT in Article 30, CMW in Article 92 and CCPED in Article 42. For more information on the core international human rights instruments and their monitoring bodies visit the official website of the Office of the United Nations High Commissioner for Human Rights at: http://www2.ohchr.org/english/law/index.htm (last accessed on 12 September 2008).

8 See G. Zyberi, *supra* note 1, pp. 250-259.

9 ICJ, *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951, ICJ Reports 1951, p. 24.

10 *Ibidem*.

of international law obligations. Until then, placing any kind of restriction on the right to enter reservations to multilateral conventions would have been quite difficult. Clearly, the Court drew attention to the necessity of balancing prerogatives of State sovereignty with the need to safeguard the ultimate aim of achieving the object and purpose of the Genocide Convention, that is the prohibition of genocide. In this advisory opinion the Court plainly refuted the proposition that the sovereign prerogative of entering reservations to a multilateral convention could trump the very objective and purpose of this Convention. Such a finding bears witness to the importance the Court placed upon upholding and safeguarding basic principles of international human rights law from an early stage of their development.

Although the advisory opinion was to clarify the more general issue of reservations to multilateral conventions,[11] it is submitted that the Court's findings on the Genocide Convention would be generally applicable with regard to reservations towards other international human rights law instruments.[12] Thus, the rationale employed by the ICJ with regard to reservations to multilateral treaties could be extended also to the interpretation of international human rights treaties, since the Court appears prone to a value-oriented approach based on the principle of effectiveness.[13] The *ratio decidendi* of such an approach is best expressed in the Court's own finding in the *Reservations to the Genocide Convention*, where it stated:

> 'In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention.'[14]

By holding that certain international treaties, such as that on the prohibition of genocide, are of a humanitarian and civilizing character and that States have no interest of their own, but accept the international obligations provided therein in the interest of humanity itself, the Court paid due attention to the specific nature and the role such multilateral treaties are intended to serve.

In outlining some of the relevant elements for assessing the validity of reservations the Court noted:

> 'The origins and character of that Convention, the objects pursued by the General Assembly and the contracting parties, the relations which exist between the provisions of the Convention, *inter se*, and between those provisions and these objects, furnish elements of interpretation of the will of the General

11 GA Res. 478 (V), Reservations to Multilateral Conventions, 16 November 1950.

12 In this author's view such treaties would include *inter alia* both Covenants (the ICCPR and the ICESCR of 1966), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1969, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984, and the Convention on the Rights of the Child (CRC) of 1989. However, it should be noted that the Court itself limited the application of its findings in this advisory opinion by stating that: "The questions thus having a clearly defined object, the replies which the Court is called upon to give to them are necessarily and strictly limited to that Convention". ICJ Reports 1951, p. 9.

13 For a detailed discussion of this issue see M. Ragazzi, *The Concept of International Obligations Erga Omnes*, Oxford University Press 1997, p. 72.

14 *Reservations to the Genocide Convention*, ICJ Reports 1951, p. 23

> Assembly and the parties. The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as "a crime under international law" involving a denial of the right to existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations (Resolution 96(I) of the General Assembly, December 11th 1946).'[15]

Seemingly, the Court appears to suggest that the constituent elements of the 'object and purpose' test, upon which the validity of a reservation is to be assessed, would include *inter alia* the nature of the relevant instrument and its relation to the aims and purposes of the United Nations, and the interrelationship *inter se* and the importance that the provision affected by a reservation has within the treaty. These clarifications by the Court provide a general legal framework with regard to the issue of the validity of reservations to treaties.

## 3 Consequences of the Customary Nature of the Genocide Convention upon Reservations Thereto

Generally speaking, the customary nature of international law principles enshrined in certain provisions in human rights treaties would affect the validity of reservations thereto. Thus, drawing on the consequences of the special characteristics of the Genocide Convention the Court stated:

> 'The first consequence arising from this conception is that the principles underlying the Convention are recognized by civilized nations as binding on States even without any conventional obligation.'[16]

Firstly, the Court asserted the customary nature of the principles enshrined in the Convention. In the Court's view, due to this customary nature, the underlying principles would be binding on States despite conventional obligations, therefore also despite any reservations thereto. Consequently, if the Court accepted the binding nature of such principles, it is difficult to see why not, if the above finding were pursued to its logical conclusion, reservations made regarding provisions which give expression to such principles are null and void. Nevertheless, the extent or manner in which a provision reflects a customary principle would remain open to discussion and hence, the validity of possible reservations would need to be assessed on a case by case basis.

The Court emphasized further on that a second consequence of the origins and character of this Convention was both the universal character of the condemnation of genocide and of the co-operation required to liberate mankind from such an odious scourge, as foreseen in the Preamble to the Convention:

> 'The Genocide Convention was therefore intended by the General Assembly and by the contracting parties to be definitely universal in scope…The Convention was manifestly adopted for a purely humanitarian

15 *Ibidem*.
16 *Ibidem*.

> and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality… *Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties* (emphasis added).'[17]

Indeed, as the Court rightly pointed out, such international instruments are not made having in mind advantages or disadvantages of States, or the maintenance of a perfect contractual balance between rights and duties, but are adopted 'for a purely humanitarian and civilizing purpose'. Admittedly, the universal scope of the Genocide Convention and that of other main international human rights instruments flows *inter alia* from the universal nature of human rights themselves.

## 4 Interaction between the ICJ, the ECtHR, the HRC, and the ILC

### 4.1 Regional human rights courts

The practice of the ECtHR and the Inter-American Court of Human Rights (I-ACtHR) with regard to reservations to multilateral treaties has been cited with approval by one third of the judges of ICJ.[18] Noting the developments in this field since the issuing of the Court's 1951 advisory opinion, these judges stated:

> 'Both the European Court of Human Rights, and the Inter-American Court of Human Rights, have not followed the "laissez faire" approach attributed to the International Court's Advisory Opinion of 1951; they have each themselves pronounced upon the compatibility of specific reservations to the European Convention on Human Rights and the American Convention on Human Rights, respectively. They have not thought that it was simply a matter of bilateral sets of obligations, left to individual assessment of the States parties to the Convention concerned.'[19]

Further, these five judges, including the President of the Court, noted that human rights courts and tribunals have not regarded themselves as being precluded by ICJ's 1951 Advisory Opinion from doing anything other than noting whether a particular State has objected to a reservation.[20] In their view, this development did not create a 'schism' between general international law as represented by the Court's 1951 Advisory Opinion, a 'deviation' there from by these various courts and tribunals.[21] Not only did they endorse the practice of these human rights courts, but also did go even further by stating that the practice of the International Court itself

17 *Ibidem*.

18 That was done in a joint separate opinion of 3 February 2006 in the *Armed Activities in the Territory of the Congo* case where these judges briefly revisited the issue of reservations to treaties and expressed their views upon *inter alia* the regional human rights courts' practice concerning State reservations to their establishing treaties.

19 Joint Separate Opinions of Judges Higgins, Judge Kooijmans, Judge Elaraby, Judge Owada and Judge Simma of 3 February 2006, par. 15.

20 *Ibid*., par. 22.

21 *Ibidem*.

clearly reflected this trend for tribunals and courts themselves to pronounce on compatibility with object and purpose, when the need arises.[22] Such an open endorsement renders support to the approach and practice of these courts with regard to reservations.

### 4.1 The Human Rights Committee

The HRC is the treaty body established under the 1966 International Covenant on Civil and Political Rights (ICCPR). This important human rights organ has made use of certain concepts formulated by the ICJ in several of its General Comments. Thus, the HRC applied the 'object and purpose test' as laid down by the ICJ in the advisory opinion in the *Reservations to the Genocide Convention* to conclude in its General Comment 24 that *inter alia* 'a State could not make a reservation to article 2, paragraph 3, of the Covenant, indicating that it intends to provide no remedies for human rights violations' and that 'a reservation that rejects the Committee's competence to interpret the requirements of any provisions of the Covenant would also be contrary to the object and purpose of that treaty'.[23] It should be mentioned that the HRC has held that it necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant, since that is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions. Further, in the HRC's view, the normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party, but rather that the Covenant will be operative for the reserving party without the benefit of the reservation. Evidently, such an approach intends to give effect to the obligations taken under the Covenant according to the principle *ut res magis valeat quam pereat*.[24]

### 4.2 The International Law Commission

The ILC started work on the topic of 'Reservations to Treaties' in late 1993, after the General Assembly endorsed its decision to include this topic in its work agenda.[25] Since then the Commission has discussed thirteen reports prepared by its Special Rapporteur, Mr Allain Pellet, and has adopted a number of rules, which form part of its detailed 'Guide to Practice', which is meant to assist and guide States and international organizations. As part of consultations on this topic with relevant actors, besides asking States to express their opinion through a questionnaire it prepared and circulated, in May 2007 the ILC meet with representatives of

22 *Ibid*., par. 23.
23 HRC, *CCPR/C/21/Rev.1/Add.6*, General Comment 24, *Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, 1994.
24 Latin for 'That the matter may have effect rather than fail.' See Black's Law Dictionary, 7th edition, 1999, p. 1697
25 Namely General Assembly Resolution 48/31 of 9 December 1993.

the United Nations human rights treaty bodies and regional human rights bodies.[26] It is noteworthy that the starting point adopted by the Special Rapporteur and supported by the Commission seems to be that the general regime on reservations for international human rights should not be different from that of other treaties.[27] That position was somewhat at odds with the one favoured by the HRC, advocating a special regime for human rights treaties based on their specific characteristics. In spite of that general position, which is based on the premise of preserving the unity of the legal regime on reservations to treaties, the Commission, however, does provide specific guidance for States on the issue of reservations to general human rights treaties. Thus, draft rule 3.1.12 reads: 'To assess the compatibility of a reservation with the object and purpose of a general treaty for the protection of human rights, account shall be taken of the indivisibility, interdependence and interrelatedness of the rights set out in the treaty as well as the importance that the right or provision which is the subject of the reservation has within the general thrust of the treaty, and the gravity of the impact the reservation has upon it.'[28] There are other draft guidelines which in one way or another relate or would be of relevance to human rights treaties.[29] In their entirety these guidelines provide States and judicial or quasi-judicial organs with a useful manual which can assist them in dealing with different issues falling in the area of reservations to treaties.

Evidently, Draft Guideline 3.1.12 tries to strike a balance between different considerations through a combination of three elements, namely:

a) 'The indivisibility, interdependence and interrelatedness of the rights set out in the treaty';
b) 'The importance that the right or provision which is the subject of the reservation has within the general thrust of the treaty'; and
c) 'The gravity of the impact the reservation has upon it'.[30]

The first element chosen by the ILC emphasizes that close relationship between human rights enumerated in a human rights treaty. Its wording is borrowed from paragraph 5 of the 1993 Vienna Declaration and Programme of Action and is meant to preserve the unity and harmony of the provisions of the human rights treaty concerned. The second element takes into account the importance of a particular right vis-à-vis others. It actually qualifies the first one, allowing for a categorization of rights according to their importance. Suffice it to mention here that the notion of non-derogable rights is well-entrenched in international human rights law. The third

26 Meeting with Human Rights Bodies (15 and 16 May 2007), ILC(LIX)/RT/CRP. 1, 27 July 2007. A report of this meeting is available at: http://untreaty.un.org/ilc/documentation/english/ilc(lix)_rt_crp1.pdf (last accessed on 12 September 2008).

27 See Preliminary Conclusions of the International Law Commission on Reservations to Normative Multilateral Treaties Including Human Rights Treaties, Yearbook of the International Law Commission, 1997, Vol. II, Part Two, p. 57. Available at: http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1997_v2_p2_e.pdf (last accessed on 12 September 2008).

28 ILC, Report of the fifty-ninth session (2007), A/62/10, p. 65. Also available online at: http://untreaty.un.org/ilc/reports/2007/2007report.htm (last accessed on 12 September 2008).

29 See especially draft guideline 3.1.8, on reservations to a provision reflecting a customary norm, draft guideline 3.1.9, on reservations contrary to a rule of *jus cogens*, and draft guideline 3.1.10, on reservations to provisions relating to non-derogable rights in ILC, Report of the fifty-ninth session (2007), A/62/10, p. 65.

30 See for more details ILC, Report of the fifty-ninth session (2007), A/62/10, pp. 113-116.

element relates to the effect a reservation has upon the provision or right concerned. In this regard it seems that the potential impact would have to be assessed in light of the reservation's effect in the framework of the domestic legal system of the State concerned. These three elements in their entirety give expression to the 'object and purpose' test as laid down by the ICJ.[31]

## 4 Conclusions

As mentioned above, although the ICJ's advisory opinion on the *Reservations to the Genocide Convention* was primarily requested to clarify the issue of reservations to the Genocide Convention, the rationale of the Court's findings in that case is generally applicable to the validity of reservations to other international human rights law instruments. That advisory opinion in combination with the later joint separate opinion in the *Armed Activities in the Territory of the Congo* case construct a theoretical framework which provides general guidance in dealing with and in assessing the validity of State reservations to treaties. The effect of applying to reservations such an 'object and purpose' test, while keeping in mind the 'civilizing and humanitarian nature' of international human rights treaties, has exercised a humanizing effect upon that yet underdeveloped part of international law since an early stage. That approach of the ICJ has been generally followed by other international bodies.

In their entirety, the case law of the ICJ and of the ECtHR, the practice of the HRC, and the work of the ILC have undeniably furthered the development of international law in the area of reservations to treaties by providing more clarity for both States and international organisations. In this regard it should be mentioned that the ILC's position of maintaining the unity of the legal regime on reservations to treaties, including international human rights treaties, is the right approach. Keeping the fabric of international law together instead of developing different standards would avoid the potentially disruptive effect fragmentation in this area can have for the international legal order and the system of human rights protection itself.[32] Since international human rights law is an integral part of international law the focus should remain on its mainstreaming and not on further fragmentation. It goes without saying that it is of utmost importance that the final product of the ILC, namely its 'Guide to Practice', has the effect of strengthening the human rights protection system. To that regard, it seems that the considerable number of guidelines applicable to reservations to international human rights treaties, which are in the process of being discussed and adopted by the ILC, reflect the general legal framework laid down by the ICJ and have the accumulative effect of strengthening this system.

31 See quotation above from *Reservations to the Genocide Convention*, section 2, footnote 15.

32 On the issue of fragmentation of international law see M. Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, Erik Castrén Institute Research Reports, Helsinki: Tiedekirja, 2007.