Reserving Rights: Explaining Human Rights Treaty Reservations*

Kelebogile Zvobgo† Wayne Sandholtz‡ Suzie Mulesky§

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Abstract

International relations scholarship has made significant strides in explaining how states design treaty obligations and why they accept treaty commitments. However, far less attention has been paid to factors that may influence states' modification of their treaty obligations via reservations. We theorize that states will be more likely to enter reservations when treaty obligations increase compliance costs and policy adjustment costs. More specifically, we expect that demanding provisions, i.e., provisions that create strong, precise obligations requiring domestic action, will enhance the likelihood of reservation. To test our theory, we exploit an original dataset that codes reservations at the provision (treaty-article-paragraph) level for the ten core international human rights treaties. Consistent with our expectations, we find that states are more likely to enter reservations on more demanding treaty provisions. In contrast to prior studies, our results indicate that reservations are not driven purely by state-level characteristics like regime type and the nature of the legal system. Rather, it appears that states weigh individual treaty obligations and calibrate their commitments accordingly.

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† Political Science and International Relations, University of Southern California; Global Research Institute, William & Mary, kzvobgo@wm.edu.
‡ Political Science and International Relations, University of Southern California, wayne.sandholz@usc.edu.
§ Political Science and International Relations, University of Southern California; Ostrom Workshop, Indiana University, sjcaldwe@usc.edu.

1 Introduction

An enduring puzzle in international relations, for both scholars and practitioners, is how states can credibly commit to international agreements (Hathaway, 2003; Goodliffe and Hawkins, 2006; Vreeland, 2008; Simmons, 2009; Sikkink, 2011). Multilateral treaties represent a common, perhaps the most typical, form of international agreement deployed by states to address shared security, economic, environmental, and human rights challenges. Indeed, the proliferation of treaties is part of a broader "move to law" or the "legalization of world politics" (Goldstein et al., 2000). However, not all states are interested in costly commitment and compliance. Further, not all states—even those that *are* interested in cooperation—are equally positioned to commit to and comply with all treaty obligations.

Research has considerably advanced our understanding of treaty design, that is, of why states arrive at particular choices in creating institutions to manage their relations in a given issue area (Koremenos, 2001). One of the key dimensions of treaty design is flexibility—the extent to which a treaty allows states to modify, temporarily suspend, or even withdraw from an agreement (Koremenos, 2016). Flexibility can be a sensitive issue, particularly in the design of treaties that aspire to universal state participation, as human rights treaties do (Baylis, 1999; Clark 1991; Henkin, 1995; Lijnzaad, 1995; Redgwell 1997; Schabas, 1995). On the one hand, less flexibility for states to soften their obligations enhances the likelihood that a treaty will achieve its objectives. On the other hand, less flexibility for states likely decreases the number states that are willing to ratify (Downs, 1996; Gilligan, 2004). This study focuses on one of the most fundamental, yet often contested, mechanisms of treaty flexibility: reservations.

Reservations are statements that purport to modify a state's obligations under a ratified treaty. They allow states to adjust particular obligations.[1] States can use reservations to relax

[1] Reservations do not allow limitless modification of treaty obligations. Reservations are permissible unless a treaty expressly prohibits them and as long as the reservation is not "incompatible with the object and purpose of the treaty" (Vienna Convention on the Law of Treaties, 1969: Article 19).

obligations that might otherwise make a given treaty too costly to ratify. In brief, reservations are a tool for increasing flexibility in treaty design (Koremenos, 2016). Relative to treaty commitment and treaty compliance, scholarship has paid little attention to treaty reservations and factors that may influence states' decision to use them (Neumayer, 2007; Simmons, 2009; Hill, 2016; McKibben and Western, 2018). We argue that analyzing reservation behavior can offer vital insights into how states commit to treaties and how they seek to make use of flexibility in treaty design.

Our analysis focuses on global human rights treaties, which pose the "broader vs. deeper" tradeoff (Gilligan, 2004) in a particularly acute fashion. The goal for any human rights treaty is universal ratification: human rights treaty norms should apply everywhere. Flexibility through reservations makes it possible for more states to ratify, but also dilutes protections for human rights (as states relax some of their obligations). We aim to advance our collective understanding of states' reservation behavior. Our study offers a significant advance over prior research on this topic because we analyze reservations at the level of specific obligations; that is, the level of the provision (treaty-article-paragraph). By examining the characteristics of obligations that attract reservations, we add to our collective understanding of treaty design and treaty commitment.

We argue that factors at the provision level can affect the likelihood that a state will enter reservations. More specifically, we expect that states will be more likely to reserve against provisions that are more demanding (those that contain obligations that are strong, precise, and require domestic action). We focus our theory and analysis on states that ratify or accede to human rights treaties because they are the states for whom reservation has legal consequences; reservations are meaningless for states that decline to accept treaty obligations.[2] Reservations allow a state to participate in a treaty while easing obligations for which it anticipates that compliance would be excessively costly. Our argument implies that, for some treaty obligations, reservation and non-

[2] As a robustness check, we also use a selection model, including both ratifying and non-ratifying states, to estimate the effect of demanding provisions on reservations.

compliance are *partial* substitutes: a state can reserve now so as to avoid non-compliance later, or it can ratify without reservation but subsequently find itself at risk of non-compliance.[3]

We seek to make both a theoretical and empirical contribution to our understanding of how states manage their treaty obligations. First, we build into our theory and our analysis the substantive content of treaties at the level of the individual provision to better understand reservations. In so doing, we add to extant theories and analyses that operate at the level of the country or at the level of the treaty. Approaches that operate at the level of the country assume that ratification is a dichotomous choice driven by symbolic politics, strategic concerns, or cheap talk.[4] However, these explanations neglect how *the decision to accept a treaty commitment is also shaped by the language* through which obligations are articulated in treaties.[5] States are concerned with treaty language and the extent to which it is constraining (Dancy and Sikkink, 2011; Koremenos, 2016). In turn, approaches that operate at the level of the treaty ignore immense variation in obligations—and how difficult they may be to comply with – across treaties. Yet, *there is variation across provisions within a single treaty and across treaties*, both in terms of the subject matter and the extent of obligation. In this paper, we theoretically expect and empirically demonstrate that states perceive heterogeneous compliance costs and policy adjustment costs across different obligations. On the premise that more demanding obligations imply greater compliance and policy adjustment costs, we argue—and find—that states adjust their treaty commitments using reservations.

Second, we introduce a novel dataset that codes reservations at the provision level for the ten core international human rights treaties. The granular nature of our data, we submit, helps us

[3] That reservations are less costly than non-compliance does not imply that we should never expect non-compliance. The inference that we should never expect non-compliance and only expect reservations would follow only if nothing changed—not the government, not society, not the world—between the time of reservation and a subsequent decision by a state about compliance/non-compliance.
[4] See Simmons' (2009) discussion of sincere ratifiers, false negatives, strategic ratifiers (false positives).
[5] See, for example, Dancy and Sikkink (2011) who describe how some treaties covering physical integrity rights stipulate individual criminal accountability for violations, whereas others do not, while others still neither cover physical integrity rights nor require precise remedial actions for violations.

develop a clearer understanding of how states modulate their commitments—and therefore the degree to which they can be held accountable—to human rights treaties.

Third, we find that human rights treaty reservations are not driven only by state-level characteristics like judicial independence, as previous scholarship has suggested. We find a robust relationship between demanding obligations and the likelihood of reservation, whereas we find an inconsistent relationship between domestic institutions and reservations. Thus, we demonstrate that the degree to which specific provisions create demanding obligations affects states' efforts to calibrate their treaty commitments.

2 Demanding obligations: Concept and utility

Treaties typically create multiple obligations, which vary in intensity or "demandingness." Our approach to demanding obligations builds on some of the insights of the legalization project but moves beyond it in key respects. In Abbott and coauthors' formulation, "obligation" is one of three dimensions that define a continuum of legalization, the other two being "precision" and "delegation." Norms that exhibit a greater degree of obligation, precision, and delegation are more legalized (Abbot and Snidal, 2000; Abbott et al., 2000). For this study we make obligations the center of attention and suggest that even at high levels of legalization (formal treaties), obligations vary in terms of the burden they place on states. We bring together three dimensions that allow us to identify demanding obligations.

The first task is to identify treaty provisions that create an obligation. For example, Article 28(1)(a) of the Convention on the Rights of the Child (CRC) establishes an obligation: "States Parties ... shall, in particular: (a) Make primary education compulsory and available free to all" (1989). In some treaties, a majority of provisions serve other functions (defining treaty terms or outlining treaty mechanics, for example).

For those provisions that do create obligations, three characteristics make an obligation

demanding. First, an obligation must be precise. This dimension closely corresponds with the same concept as used by Abbott et al. (2000) and by Koremenos (2016). Precise obligations require (or prohibit) *specific, identifiable actions* on the part of the state or other actors. Precise obligations are potentially more costly for states because they make it easier for other actors to determine whether or not the state is complying (Koremenos, 2016). An example of a precise obligation is the following:

> "Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides" (Convention Against Torture, 1984: Article 6(3)).

The following is an example of an imprecise obligation:

> "States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms" (Convention on the Rights of Persons with Disabilities, 2006: Article 6).

The second dimension taps into whether an obligation is strong or weak. Weak obligations express a goal or aspiration; strong obligations, by contrast, stipulate what a state *must* (or must not) do. The distinction between "shall" or "shall not" and "undertake to" is a key distinction that dramatically alters the likely costs to a state. Some treaty terms indicate a weak obligation because they allow states leeway in deciding the extent of their obligations: "when circumstances so warrant," "take all feasible measures," "whenever appropriate," "whenever desirable." These phrases create weak obligations because they allow states to determine when a particular action is "appropriate," or when circumstances "warrant." Weak obligations are less costly because all that is required is for the state to make *some* effort, the nature and extent of which is up to the state. As a weak obligation, we would cite:

> "States Parties *undertake* to ensure the child such protection and care as is necessary for his or her well-being, *taking into account* the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her..." (Convention on the Rights of the Child, 1989: Article 3(2); emphasis added).

An example of a strong obligation is the following:

> "States Parties *shall accord* to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they *shall give* women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals." (Convention on the Elimination of All Forms of Discrimination Against Women, 1979: Article 15(2); emphasis added).

The third dimension captures whether a provision obligates states to take domestic action. "Domestic action" means that an executive, administrative, legislative, or judicial body must carry out the identified obligation. Not all obligations created by a treaty require domestic action; some provisions obligate states vis-a-vis each other or an international organization.[6] An example of an obligation requiring domestic action is:

> "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture" (Convention Against Torture, 1984: Article 4(1)).

As an obligation that does not require domestic action, we would cite:

> "Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation" (International Covenant on Civil and Political Rights, 1966: Article 4).

We suggest that obligations to implement domestic measures tend to imply greater costs for states. Research on human rights treaties finds that the primary means by which they bring pressure on rights-violating governments are domestic, through political mobilization or judicial action (Simmons, 2009). The failure to take domestic measures (as opposed to the failure to honor obligations vis-à-vis another state) are more likely to trigger domestic political or judicial action.

We define demanding obligations as those that are precise, and strong, and require domestic

[6] Though, in our sample, 91% of the obligations require domestic action.

action.[7]

3 Reservations: The state of knowledge

A reservation is a statement by which a state excludes or alters the legal effect of certain treaty provisions as they pertain to that state (United Nations, 2012, 12; Bradley and Goldsmith, 2000; Schabas, 1995). Reservations are distinct from understandings and declarations, which can neither exclude nor alter the legal effect of treaty provisions (United Nations, 2012: 16). We focus on reservations because they entail legal consequences; we exclude understandings and declarations because, though they may have rhetorical uses, they have no legal effects. The Vienna Convention on the Law of Treaties permits treaty reservations 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 the above two categories, the reservation is incompatible with the object and purpose of the treaty" (1969: Article 19).

Scholars have observed that human rights treaties are particularly susceptible to reservations because human rights treaties aim to regulate states' domestic behavior, unlike other treaties which frame and regulate behavior between and among states. Indeed, human rights treaties disrupt state sovereignty in a manner distinct from other treaty types (Clark, 1991; Hathaway, 2003; Neumayer, 2007; von Stein 2016). Scholars are divided on the question of the validity and implications of reservations for the international human rights regime. On the one hand, reservations bolster human rights treaties by increasing participation, which international organizations, like the United Nations (UN), greatly value (Schabas, 1995). In addition to recognizing global political and cultural diversity, reservations affirm a fundamental principle of international law: sovereign consent (Bradley and Goldsmith, 2000). On the other hand, reservations can undermine universality, call into question states' motivations for becoming a party to a treaty, and, when numerous and

[7] In our data, an obligation is coded as *Demanding* = 1 if *Precise* = 1 and *Strong* = 1 and *Domestic action* = 1; otherwise, *Demanding* = 0.

extensive, threaten the integrity of treaties (Baylis, 1999; Clark 1991; Henkin, 1995; Schabas, 1995). Some scholars even argue that reservations should be disallowed (Lijnzaad, 1995; Redgwell 1997).

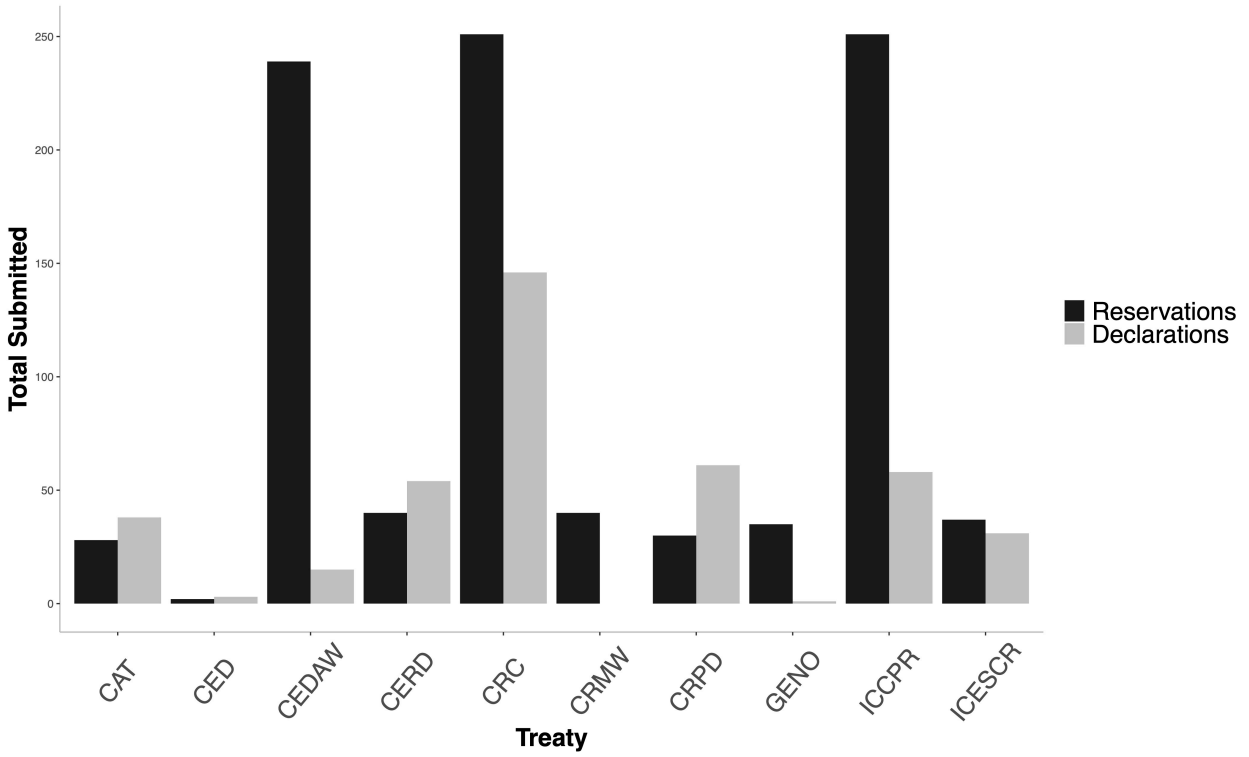
But what factors predict human rights treaty reservations? Relatively few studies answer this question empirically. Neumayer (2007) evaluates the relationship between respect for human rights and democracy (on the one hand) and treaty reservations, understandings and declarations (RUDs) (on the other), from 1948 to 2005. Neumayer finds that countries with higher levels of respect for human rights enter more RUDs than countries with lower levels of respect for human rights, while more democratic countries enter more RUDs than less democratic countries. Neumayer consequently takes a less pessimistic view of reservations, arguing that democratic countries and human rights-respecting countries do not use RUDs maliciously but, rather, to indicate credible commitment. Contrary to Neumayer (2007), Simmons (2009: 98-103) finds that democratic countries are actually less likely to enter RUDs than non-democratic countries.

Recent work by Hill (2016) and McKibben and Western (2018) presents a rejoinder to the argument that states' existing human rights preferences and human rights practice best explain the use of reservations. Hill (2016) argues that domestic legal constraints and the likelihood of enforcement by domestic courts explain states' use of RUDs. Using the case of the International Covenant on Civil and Political Rights (ICCPR), Hill finds that governments are more likely to use RUDs when "ratification entails adopting a higher legal standard of rights protection" and when governments expect enforcement by domestic courts (2016: 1134). McKibben and Western (2018) similarly argue that state executive power, relative to state legislative and judicial power, influences both the use of reservations and the types of reservations used. McKibben and Western find that executives that are more constrained by the legislative and judicial branches are more likely to enter reservations than executives that are less constrained. Moreover, when faced with greater judicial constraints, executives are more likely to employ procedural reservations whereas, when faced with greater legislative constraints, are more likely to employ substantive reservations.

Neumayer (2007), Simmons (2009), Hill (2016), and McKibben and Western (2018) represent important steps towards understanding factors likely to influence state reservation behavior. We build on the existing research by, first, separating reservations from understandings and declarations. As noted above, reservations are legal tools states use to modify the legal effect of certain treaty provisions, whereas understandings and declarations are not. Indeed, as seen in Figure 1, the patterns of reservations and declarations[8] differ considerably across the treaties in our data. Second, previous research analyzes whether or not a state has entered reservations (or reservations of a particular type) on a given treaty. In contrast, we examine each obligation in each of the ten core human rights treaties and model whether a state has entered a reservation *on that provision*. We are thus able to offer a more fine-grained analysis—at the provision level—of how states seek to modulate their treaty commitments.

[8] For clarity, understandings are included in the declarations category, since they are similar in legal status and effects.

Figure 1: Human Rights Treaty Reservations and Declarations, 1948-2014



4 Demanding obligations and reservations

Demanding obligations entail a higher likelihood that non-compliance will be detected, publicized, criticized, and penalized. According to prior research, human rights treaties have their greatest effect through domestic action. Indeed, "treaties are causally meaningful to the extent that they empower individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties" (Simmons, 2009: 25; see also von Stein, 2016). We extend this logic to treaty provisions. Since demanding provisions generate clear standards for evaluating treaty compliance, it should be easier for domestic actors to identify and contest non-compliance with these provisions, for example, via litigation. Demanding obligations and their clearer standards for compliance can assist advocates when challenging non-compliant governments. Put differently, demanding obligations empower domestic actors to "check" the executive, punish it for

failing to comply with its agreements, and apply pressure for compliance. A state may thus enter reservations to relax its obligations and preempt such challenges. In other words, demanding obligations imply higher downstream costs for ratifying states than do non-demanding obligations. More demanding obligations should therefore be more likely to attract reservations.

Governments may thus view reservation and non-compliance as partial substitutes. A state may reserve on a particular obligation if it believes it will be unable to comply later. Under this logic, it is better to avoid or dilute an obligation than to accept it and subsequently violate it.[9] There may be some costs associated with reservations, to the extent that other states or non-governmental organizations (NGOs) criticize them. The human rights treaty bodies, as well as the universal periodic review process at the UN Human Rights Council, may also produce recommendations that a state withdraw its reservations. Domestic actors could then leverage such recommendations to apply pressure on the government. Still, a reservation does not provide the basis for rights litigation in domestic courts that a violation can. There may also be some reputational benefits to not reserving, to the extent that rights-promoting states and NGOs credit states for not reserving, though we can cite no examples. On the whole, we must assume that the costs of reserving are lower on average than the costs of violation and we know of no research that would lead us to expect otherwise. Indeed, it would be difficult to account for reservations at all if states did not generally see reserving as less costly than non-compliance. In other words, we assume that entering a reservation is more "under the radar" than treaty violation, therefore eliciting less criticism and other forms of pressure.

> Hypothesis 1: *States will be more likely to reserve against provisions that create demanding obligations (obligations that are strong, precise, and stipulate domestic action).*

Provisions also vary as to whether they permit states to temporarily suspend them (derogate). Derogation is a flexibility mechanism (Koremenos 2016) that allows states to suspend

[9] Of course, a subsequent government in the same state might view the tradeoff differently, which is why we should expect to observe both reservations and subsequent non-compliance.

temporarily some treaty obligations under exceptional circumstances, like emergencies that threaten the existence of the state. However, some human rights treaties identify certain provisions from which no derogations are permissible. Provisions that are subject to non-derogation clauses might make some obligations appear more demanding to states because states can never suspend them. For example, with respect to physical integrity rights, non-derogable provisions significantly curtail non-democratic leaders' ability to repress disfavored groups. Non-derogable provisions may also require significant policy adjustment for democratic leaders in times of crisis. For example, some state leaders may favor torture as an intelligence-gathering technique when there are significant and impending threats to national security. However, for states parties to the Convention against Torture, there are "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, [that] may be invoked as a justification of torture" (Convention Against Torture, 1984: Article 2(2)). Because non-derogable obligations imply potentially greater downstream costs, we offer the following subsidiary proposition:

> *Hypothesis 2: States will be more likely to reserve against provisions that are subject to non-derogation clauses.*

5 Data

We evaluate our hypotheses against an original dataset measuring international human rights treaty obligations ([REDACTED]) and reservations. Treaty provisions have three levels: treaty, article, and paragraph. Sometimes, countries will attach a reservation to a whole article. We consider whole-article reservations as reservations against each constituent paragraph (if there are any; not every article contains sub-units). We exclude reservations at the treaty level because it is impossible to code their significance at the provision level, which is our focus (arguing that demanding provisions are more likely to attract reservations). Indeed, treaty-level reservations contain no information relevant to particular obligations but, rather, convey information about the relationship between

domestic law (usually Sharia law or the constitution) and international law, or about traditional values and culture, or about political issues, like the ratifying state's relations with Israel (as McKibben and Western also point out). Because treaty-level reservations tell us nothing about how states respond to the demandingness of particular obligations, we exclude them from the analysis.

Each provision of each treaty was coded independently by two trained graduate students. The principal investigator resolved disagreements between the coders.[10] Based on the three dimensions we describe, we created a binary indicator that identifies demanding treaty obligations—those that are simultaneously precise, strong, and stipulate domestic action. As seen in Table 1, these treaties were opened between 1948 and 2006. Our data coverage begins in 1948 and ends in 2014.

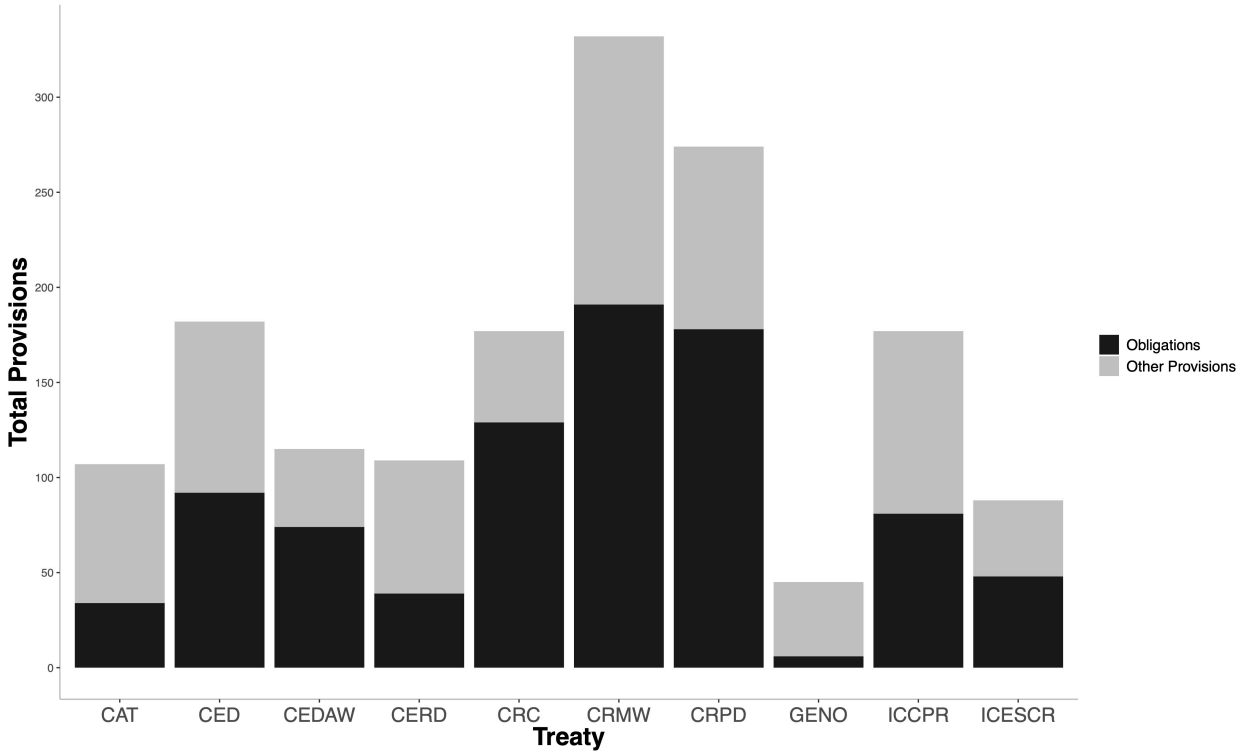
[10] Our full codebook and details on inter-coder reliability are available in supplementary appendix B.

Table 1: International human rights treaties used in this analysis, through 2014

Treaty Abbreviation	Treaty Name	Dated Opened for Signature
GENO	Convention on the Prevention and Punishment of the Crime of Genocide	December 9, 1948
CERD	International Convention on the Elimination of All Forms of Racial Discrimination	March 7, 1966
ICCPR	International Covenant on Civil and Political Rights	December 19, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights	December 19, 1966
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	December 18, 1979
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	December 10, 1984
CRC	Convention on the Rights of the Child	November 20, 1989
CRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	December 18, 1990
CRPD	Convention on the Rights of Persons with Disabilities	December 13, 2006
CED	Convention for the Protection of All Persons from Enforced Disappearance	December 20, 2006

Treaty provisions have different functions. As discussed, our focus is on obligations. Other functions of provisions include, for example, describing the foundation of the treaty (preamble), setting the general purpose or object of the treaty, and defining treaty terms. Figure 2 displays the proportion of treaty provisions that constitute obligations across the ten treaties.

Figure 2: Proportion of Provisions that Constitute Obligations



5.1 Dependent variable: Reservation

Our variable of interest, *reservation*, is a dichotomous variable that, for all ten treaties and for each treaty obligation and each state, indicates whether that state entered a reservation on that provision. States may enter a reservation against a specific provision, e.g. Article 15(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), or against a whole article, e.g., Article 15 of CEDAW. Given a reservation against a whole article, such as Article 15 of CEDAW, each

of its four paragraphs (or provisions) is coded as having a reservation attached to it.

For purposes of the analysis, we examine reservations entered by states that have ratified or acceded to a given treaty. As noted above, reservations have no legal meaning for states that do not ratify. We are most interested in the commitments states actually make, so it is appropriate to focus on the states that have committed to treaties. We include reservations within a five-year window centered on the year of ratification or accession because these are the reservations most closely tied to the decision to commit to the treaty.[11] That is, *Reservation* = 1 if a state that has ratified the treaty enters a reservation in the two years preceding the year of ratification, during the year of ratification, or in the two years following the year of ratification. In fact, 90 percent of reservations have been entered in the same year as ratification or accession. Eight percent of reservations have been entered prior to ratification, while 2 percent have been entered following ratification.[12] Our five-year window captures 91.5 percent of all reservations.

We made this research design choice as an exercise of caution, to ensure that we are comparing like units. Returning to the treaty many years later to adjust commitments already undertaken would constitute an entirely different kind of action, one future research could explore. In addition, later reservations are likely made by different domestic governments or leaders facing different constraints than the governments or leaders who were in office at time of ratification; that is, those governments and leaders who committed their countries to the relevant treaty or treaties.

[11] It may seem surprising that states enter reservations prior to ratification, but it does happen. In some countries, reservations are entered as part of the process of preparing for ratification. Of course, reservations entered before ratification are as valid as any other reservation.

[12] We exclude from the analysis reservations that purport to apply to the entire treaty. Such reservations preclude the kind of variation we analyze, namely, variation across provisions in terms of how demanding they are. In addition, the validity of such blanket reservations is contested.

5.2 Independent variables: Demanding obligations

Our variable of primary interest is the binary variable *Demanding*, which captures, as explained above, obligations that are strong, precise, and require domestic action.[13] Some examples might clarify what is being captured by *Demanding*. Consider first Venezuela's reservation regarding extradition of individuals alleged to have committed the crime of genocide as stipulated in Article 7 (single paragraph article) of the Genocide Convention.

> Obligation (demanding)
> "Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force." (Genocide Convention, 1948: Article 7)
>
> Reservation
> "With reference to article VII, notice is given that the laws in force in Venezuela do not permit the extradition of Venezuelan nationals." (Venezuela, 12 July 1960)

Next, see Slovenia's reservation regarding judicial review over the issue of child separation as stipulated in Article 9, Paragraph 1 of the Convention on the Rights of the Child (CRC).

> Obligation (demanding)
> "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence." (Convention on the Rights of the Child, 1989: Article 9(1))
>
> Reservation
> "The Republic of Slovenia reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Slovenia provides for the right of competent authorities (centres for social work) to determine on separation of a child from his/her parents without a previous judicial review." (Slovenia, 6 July 1992)

[13] In the supplementary appendix, we use an index rather than a dichotomous measure of demanding provisions. Our results are robust to both specifications. We also produce descriptive statistics and a supplementary analysis that show that the most important elements of our measure of demanding obligations are precision and domestic action.

Singapore's reservation regarding non-discrimination in health insurance provision as stipulated in Article 25, Paragraph 5 of the Convention on the Rights of Persons with Disabilities (CRPD).

> Obligation (demanding)
> "In particular, States Parties shall: Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner." (Convention on the Rights of Persons with Disabilities, 2006: Article 25(5))
>
> Reservation
> "The Republic of Singapore recognises that persons with disabilities have the right to enjoyment of the highest attainable standards of health without discrimination on the basis of disability, with a reservation on the provision by private insurers of health insurance, and life insurance, other than national health insurance regulated by the Ministry of Health, Singapore, in Article 25, paragraph (e) of the Convention." (Singapore, 18 July 2013)

Figure 3 displays the proportion of obligations that are demanding (simultaneously strong, precise, and that stipulate domestic action). Among the treaties in our sample, the Convention on the Rights of Migrant Workers (CRMW) has the most demanding obligations, while the Convention on the Elimination of All Forms of Racial Discrimination (CERD) has the fewest.

Figure 3: Proportion of Obligations that are Demanding

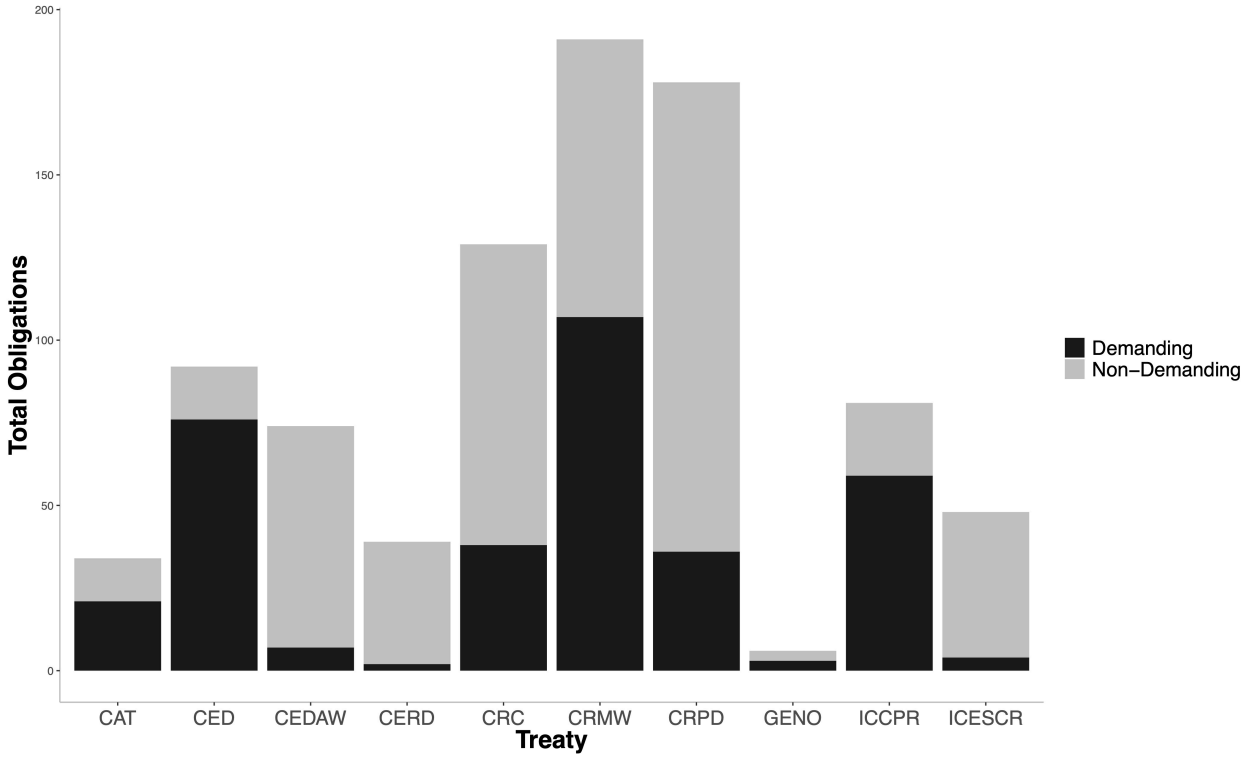


Figure 4 displays, for each treaty, the number of obligations that have at least one reservation entered. Among the treaties in our sample, the CRC has the most obligations against which at least one state has entered a reservation, while the Convention on Enforced Disappearances (CED) has the fewest.

Figure 4: Obligations with at least One Reservation

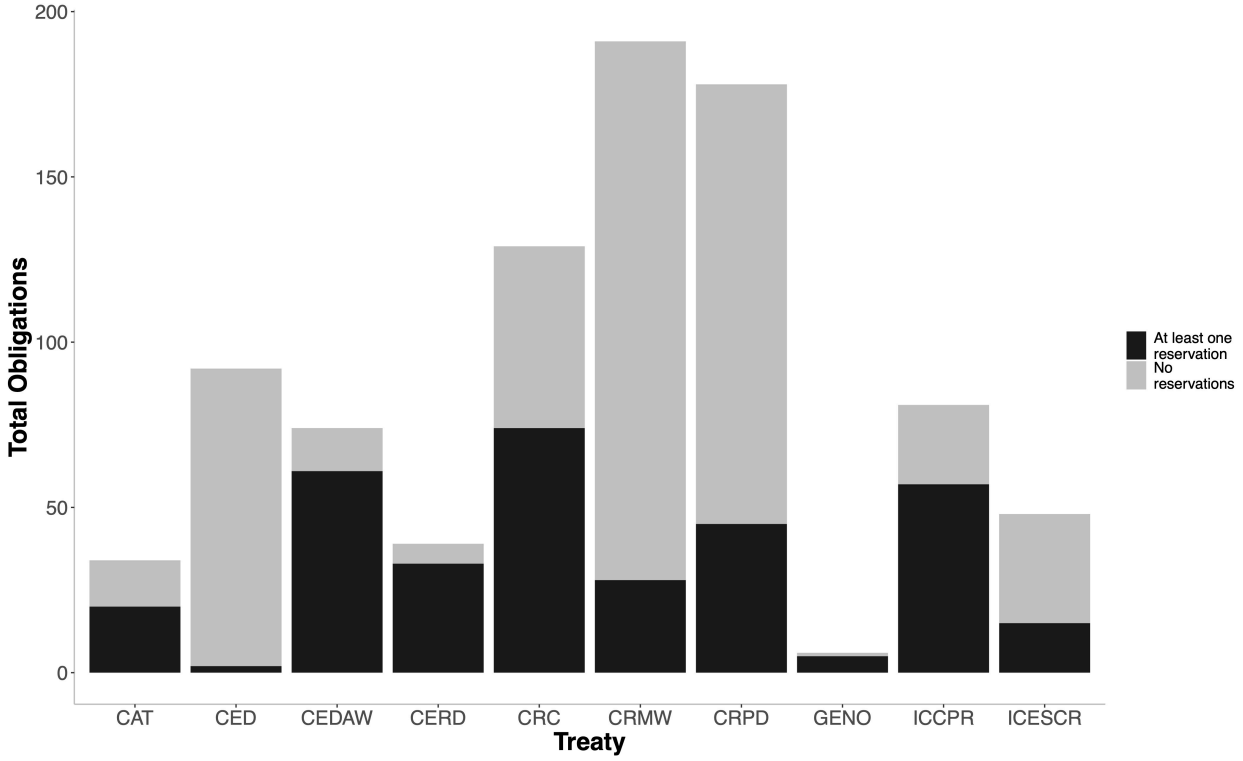


Figure 5 displays, for each treaty, the number of demanding obligations that have at least one reservation entered. Among the treaties in our sample, the ICCPR has the most demanding obligations against which at least one state has entered a reservation, while its twin, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) has none (in part because it has so few demanding obligations). Each demanding obligation of the Genocide Convention (GENO) and of CEDAW has at least one reservation.

Figure 5: Demanding Obligations with at least One Reservation

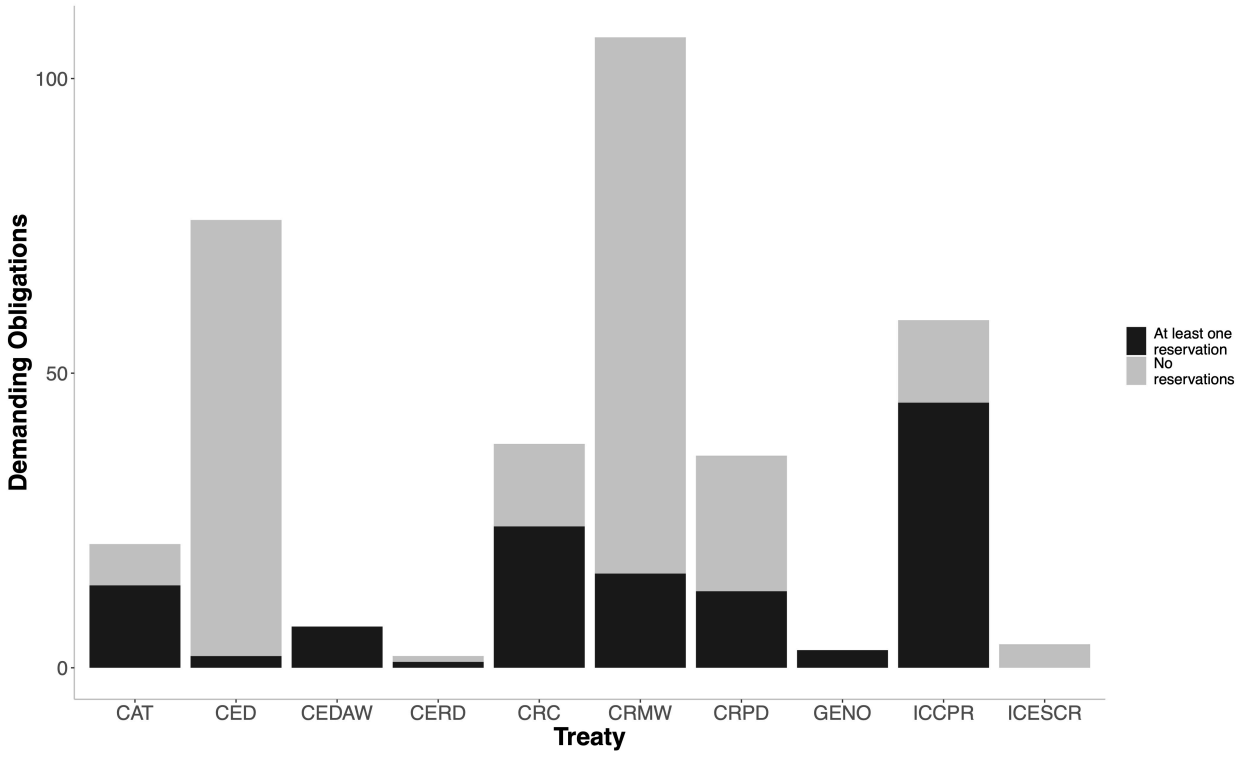
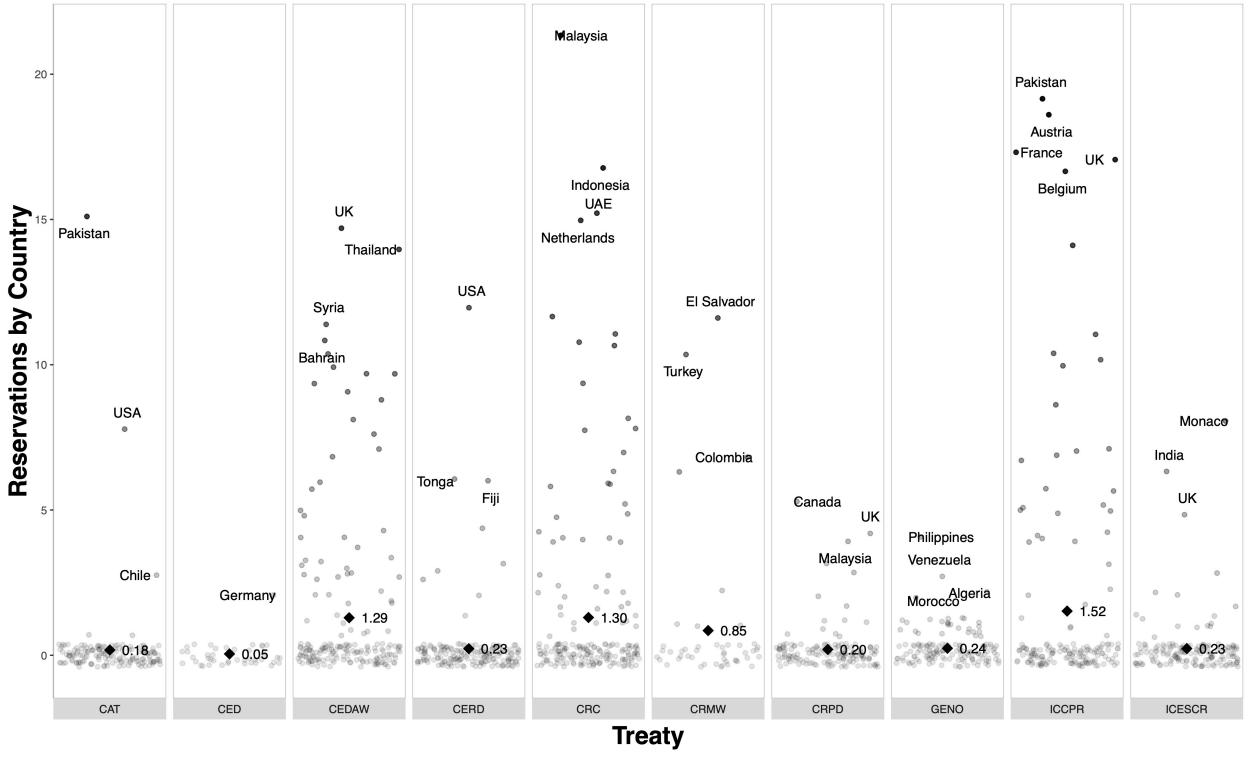


Figure 6 displays, for each treaty, the mean number of reservations per state (diamonds) and total number of reservations by state (dots). (Note: country name labels are assigned for the top-three reserving states unless there is a tie. For ease of viewing, the dots marking the number of reservations by each state are "jittered." Thus, dots representing equal values do not line up perfectly.) As the figure makes clear, most states do not enter reservations. Among treaties, the ICCPR, CEDAW, and CRC have the highest per-state reservations average, while CED has the lowest. This comports with previous scholarship, for example Schabas (1995; 1996).

Figure 6: Mean Number of Reservations and Most Prominent Reserving States



Our variable of secondary interest is the binary variable *Non-derogation*, which indicates whether a given provision is subject to a non-derogation clause, meaning that states cannot suspend or decline to apply it for any reason, including national emergencies. For example, Article 4(2) of the ICCPR stipulates, "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made

under this provision" (1966: Article 4(2)). The articles listed (and their sub-paragraphs) are therefore coded as non-derogable.

5.3 Control variables

We control for a range of potentially confounding factors, namely legal institutional, political institutional, economic, and demographic characteristics of countries that may influence the likelihood of reservation. We discuss these in turn. With the exception of common law systems and the domestic legal status of treaties, the control variables can change from year to year. So, we use an average of each variable in the three-year period preceding ratification. We include treaty dummies in the final regression model.

Legal institutions

The nature and extent of non-compliance, as well as unrealized policy adjustment, is determined and sanctioned through the domestic legal system (Simmons, 2009; [REDACTED]). Thus, we control for four key types of domestic legal institutions: common law, judicial independence, the status of treaties relative to domestic law, and the existence and strength of national human rights institutions (NHRIs).

We begin with common law systems. Judges in common law systems enjoy greater independence from the executive and legislative branches. In addition, judges in these systems are empowered to interpret and apply treaty law in ways potentially unintended by their executive and legislative counterparts (Simmons, 2009). These two features of common law systems may make executives and legislatures more reluctant to ratify human rights treaties and certainly more likely to attach reservations when they do ratify or accede to treaties. We take the measure *Common law* from JuriGlobe's (2010) Legal Systems Classification, which codes states as having common, civil, customary, Islamic, or mixed law systems. Specifically, we use the "common law only" variable which

capture the strictest definition of a common law system.[14]

Independent courts—that is, courts that are able to decide cases relatively free of influence from other branches of government or political actors—have greater capacity to apply treaty law to support findings that state actors violated treaty rights. Conversely, courts that are subject to executive branch pressure or control are much less likely to do so. Consequently, executives and legislatures may here also be more reluctant to ratify human rights treaties and more likely to enter reservations when they do ratify or accede to them. *Judicial independence* comes from the Varieties of Democracy (V-Dem) Project, specifically the measure of high court independence (Coppedge et. al, 2018). This measure captures how often the high court makes decisions based on the wishes of the government, rather than the legal record. Countries receive a minimum score of 0 when the court *always* bases its decisions on the government's wishes and a maximum value of 4 when the court *never* bases its decisions on the government's wishes.

We also take into account the domestic legal status of treaties,[15] which may also influence reservation. In states where treaties have an equal or superior status to domestic statute, treaty law can be more swiftly deployed to contest treaty non-compliant state leaders, agents, or policies, increasing the likelihood of reservations. States where treaties have an equal or superior status to domestic statute may thus be more likely to attach reservations. *Treaty equal or superior* is a binary indicator which takes a value of 1 when a state's constitution specifies equality or superiority of treaties relative to domestic statute (Elkins and Melton, 2010).

We additionally consider the strength of a national human rights institution (NHRI), a body tasked with monitoring states' compliance with their international legal obligations.[16] The indicator

[14] We thus exclude (1) states with a mixed tradition of common law and civil law, (2) states with a mixed tradition of common law and either customary or Islamic law, (3) or states with a mixed tradition of common law and combination of civil, customary, and Islamic law.
[15] See also Simmons and Danner (2010).
[16] As a note, the simple presence and operation of an NHRI is highly correlated with its powers, with a Pearson's rho of 0.96.

variable, *Strong NHRI*, is drawn from Conrad et al. (2013). It is a count variable that represents the sum of eight binary variables, which includes an NHRI's ability to hear complaints, initiate investigations, bring charges, compel testimony and documents, visit prisons and detention centers, publish findings publicly, levy punishment.

Political institutions

In terms of political institutional characteristics, we control for a country's regime type. As Hathaway (2003) and Neumayer (2007) indicate, democracies credibly commit to international human rights treaties because they possess dependable mechanisms for holding government agents accountable, both electorally and judicially. If and when democratic governments violate their obligations under international human rights law, they are more likely than non-democratic governments to be punished for non-compliance, for example, through electoral defeat. Thus, we can expect that democratic states are likely only to make commitments that they think they can keep and will attach reservations to provisions they do not think they can keep. However, as Simmons (2009) argues, democracies may be less likely to enter reservations because human rights treaties more closely reflect their preferences, relative to the preferences of non-democracies. We use the *polity2* score from the Polity IV project to measure democracy (Marshall and Jaggers, 2016). The *polity2* score is an index of data on the competitiveness of executive recruitment, openness of executive recruitment, constraints on the chief executive, regulation of participation, and the competitiveness of participation. The score measures democracy on a -10 to 10 scale. Higher scores indicate higher levels of democracy and lower scores indicate higher levels of autocracy (Marshall and Jaggers, 2016).

We also control for a country's level of respect for basic human rights. If we understand human rights respect as a demonstration of both states' capacity and willingness to protect human rights, it is reasonable to expect that countries with higher levels of respect for human rights will be less likely to reserve against treaty obligations because such states face lower compliance and

adjustment costs than those with lower levels of respect for basic rights. Yet, as discussed, Neumayer (2007) finds the opposite—that countries with greater respect for human rights enter more reservations than countries with less respect for human rights. This is consistent with the credible commitments thesis, that rights-respecting states only assume obligations they are likely to maintain. We use Fariss's (2014) latent measure of basic respect for human rights.

Economic and demographic characteristics

Finally, we control for a country's capacity to implement treaty compliance. State capacity is captured by gross domestic product per capita (logged) and the size of the population (logged). Poorer countries and countries with larger populations may reserve against treaty provisions because they foresee greater difficulty with compliance. Both indicators are drawn from the World Bank's World Development Indicators.

6 Analysis

For the analysis, we use a series of logit regressions, with reservation in the five-year window centered on ratification as the dependent variable. The data is structured as a cross section with each observation representing a country-obligation pair. That is, each treaty obligation is treated as an opportunity to reserve for each ratifying country. We are therefore able to model the reservation choice for each ratifying state on each treaty obligation.[17] We cluster standard errors by country-treaty (for instance, Afghanistan-CAT, Afghanistan-CEDAW, and so on), as we assume independence across country-treaties but allow for correlation within country-treaties.[18] Model 1 presents provision characteristics, Model 2 adds domestic institutions, Model 3 adds economic and

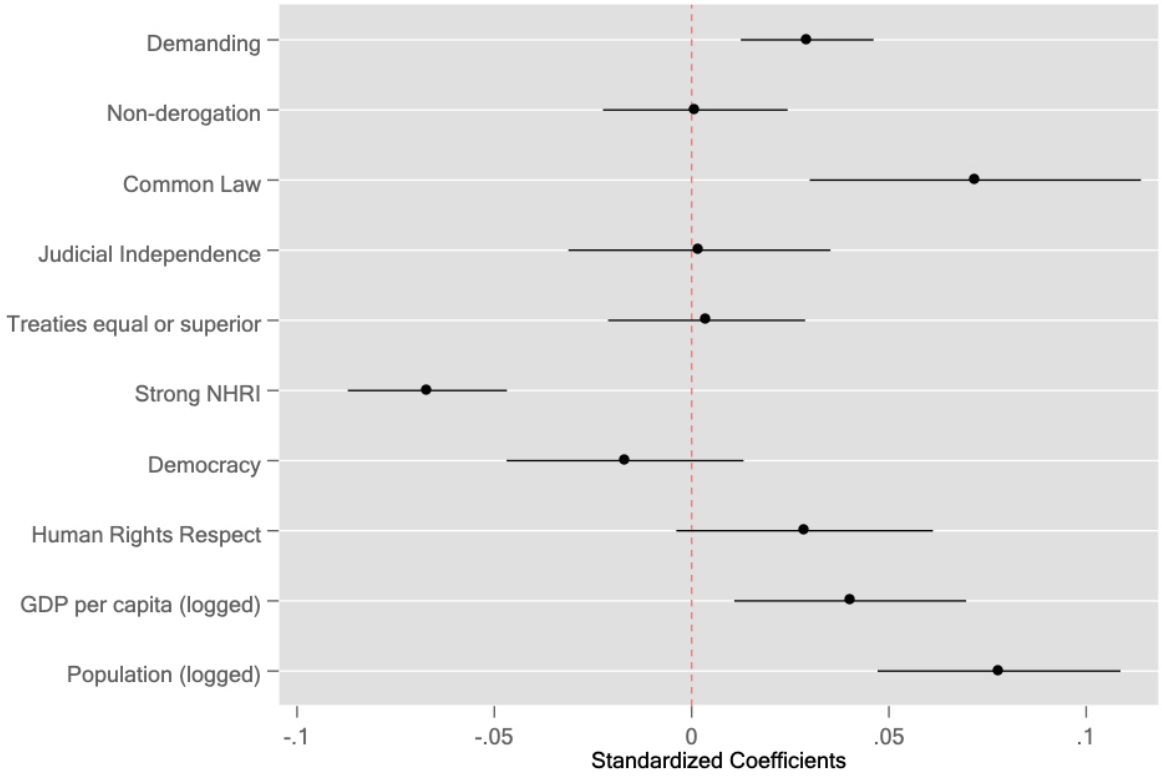
[17] We have also estimated a set of Heckman selection models. The selection equation models ratification as a binary outcome and the outcome equation models reservation (at the provision level) as a binary outcome. The outcome is thus estimated using a probit equation. The results strongly confirm our main hypothesis: states are more likely to enter reservations on demanding obligations. These results are available from the authors.

[18] In the appendix, we include models with standard errors clustered by (1) country, (2) treaty, (3) and (multi-way) by country, country-treaty, treaty, and provision. Our results are robust to these modeling specifications.

demographic factors, and, finally, Model 4 adds the treaty dummies.

Figure 7 summarizes the results of Model 3, re-estimated with standardized variables for ease of comparison. The figure produces the estimated effect of each covariate on the likelihood of reservation. Covariates to the left of the zero-line are negative predictors of the outcome, while covariates to the right of the zero-line are positive predictors of the outcome. Covariates with confidence intervals that cross the zero-line are not statistically significant. Accordingly, we cannot rule out the possibility that the covariate's relationship with the outcome is a product of chance. The coefficients in the figure are standardized for the non-dichotomous covariates, making it easier to compare the relative sizes and effects of the covariates on the outcome. At the 5% error level, *Demanding* and *GDP per capita (logged)* are comparable, positive, statistically significant predictors of reservation. Likewise, *Common law* and *Population (logged)* are comparable, positive, statistically significant predictors of reservation. For its part, *Strong NHRI* is a negative, statistically significant predictor of reservation. For all other variables, we are unable to reject the null hypothesis of no relationship with the outcome.

Figure 7: Coefficient Plot, with 95% Confidence Intervals (Model 3)



Our main hypothesis is that states will be more likely to reserve against demanding obligations (H1), that is, obligations that are strong, precise, and stipulate domestic action. As seen in Table 2, we find consistent support for Hypothesis 1. Across our models, we find that provisions that contain demanding obligations are positive and statistically significant predictors of reservations ($p<0.01$). Holding all other variables constant, the marginal effect of a demanding obligation on reservation is approximately a 70-percent increase in the likelihood of reservation. This finding confirms the usefulness of studying heterogeneity at the level of the provision. In contrast, we do not find support for our secondary hypothesis, that obligations that are subject to non-derogation clauses would be more subject to reservations (H2). These obligations are negative predictors of reservations; however, none of the effects are statistically significant at a conventional level.

Table 2: Treaty Reservations at the Provision Level

	Reservation			
	(1)	(2)	(3)	(4)
Provision Characteristics				
Demanding	0.56**	0.56**	0.53**	0.43**
	(0.12)	(0.15)	(0.15)	(0.12)
Non-derogation	-0.17	-0.25	-0.07	-0.52
	(0.39)	(0.46)	(0.48)	(0.49)
Legal Institutional Controls				
Common Law		1.55**	1.38**	1.15**
		(0.35)	(0.35)	(0.39)
Judicial Independence		0.10	0.03	0.02
		(0.11)	(0.13)	(0.14)
Treaties Equal or Superior		-0.15	-0.16	-0.19
		(0.30)	(0.30)	(0.32)
Strong NHRI		-0.12**	-0.14**	-0.12**
		(0.03)	(0.03)	(0.03)
Political Institutional Controls				
Democracy		0.00	-0.03	-0.03
		(0.02)	(0.02)	(0.02)
Basic Rights Respected		0.04	0.14	0.15
		(0.14)	(0.13)	(0.13)
Economic and Demographic Controls				
GDP per capita (logged)			0.25**	0.30**
			(0.10)	(0.09)
Population (logged)			0.37**	0.39**
			(0.08)	(0.08)
Constant	-4.66**	-4.64**	-12.49**	-13.12**
	(0.11)	(0.18)	(1.17)	(1.31)
Treaty Dummies	No	No	No	Yes
Observations	73121	52859	48640	48640

Standard errors in parentheses. All models report standard errors clustered by country-treaty.

*+ p<0.10, * p<0.05, ** p<0.01*

Next, we explore theoretical expectations from the extant literature, captured in control variables including common law, judicial independence, the legal status of treaties relative to

domestic statute, and the strength of the NHRI. Across the models in which domestic legal institutions are included, we find that a common law tradition is a positive and statistically significant predictor of reservation ($p<0.01$). This suggests that states with common law traditions do in fact anticipate higher compliance costs than states with civil law or mixed traditions, due to judges' greater independence and their power to interpret and apply treaty law. The marginal effect of a common law system is even larger than the marginal effect of a demanding obligation. Holding all other variables constant, states with common law systems are almost four times as likely to enter reservations. In contrast, we do not observe a positive and statistically significant relationship between judicial independence *per se* and reservations. In addition, we do not find that states where treaties are of equal or superior legal status to domestic statute are more likely to enter reservations. Interestingly, we observe a negative and statistically significant relationship between strong NHRIs and reservations ($p<0.01$). It is likely that the presence, functioning, and strength of an NRHI is itself a credible commitment to respect for human rights, in particular those enshrined in international legal agreements, such that those countries that have established such an institution are unlikely to modulate their treaty obligations using reservations.

Regarding political institutional control variables, democracies are neither more nor less likely to reserve against obligations. This finding contrasts with the existing scholarship. Neumayer (2007) finds that democracies are *more likely* to enter RUDs than non-democracies, while Simmons (2009) finds that democracies are *less likely* to enter RUDs. There are a few potential reasons why our results differ from prior studies that are worth noting. First, in our analysis, we distinguish reservations from understandings and declarations, as their respective meanings and legal effects are different for states. Second, the country-provision is our unit of analysis, whereas the previous two studies have used the country as the unit of analysis. Relatedly, the dependent variable, reservation, is measured against individual obligations; it is not a simple count of all reservations entered against the relevant treaty. Given these innovations, it is not surprising that the effect of

democracy on reservation is not statistically significant.

Next, we do not observe a stable relationship between respect for basic human rights and reservations. This finding also contrasts with the existing scholarship. As discussed, Neumayer (2007) finds that countries with greater respect for human rights submit more reservations than countries with less respect for human rights because the former are more likely to credibly commit than the latter. Yet, it is also reasonable to expect that countries with higher levels of respect for human rights are less likely to reserve against treaty obligations. Certainly, human rights respecting states face lower adjustment costs than states with lower levels of human rights respect. While we cannot infer too much from a noisy null result like the one we observe, it could be that both logics hold—better human rights respect means more credible commitment and lower adjustment and compliance costs.

Finally, among the economic and demographic controls, we find that both GDP per capita and population are positive and statistically significant predictors of reservation. While wealthier countries might experience lower adjustment costs with respect to their legal commitments, making reservations less likely, these same countries also have the resources to fund a larger, more-expert delegation that can craft reservations, making reservations more likely. Our positive finding for population comports with the conventional wisdom that states that are duty-bearers to a greater number of people face higher adjustment costs. They are, thus, more likely to enter reservations.

7 Conclusion

Though scholarship has developed a sophisticated understanding of human rights treaty ratification and compliance, it has devoted far less attention to a third tool with which states can manage human rights obligations enshrined in treaties: reservations. States use reservations to modify or avoid treaty obligations. By analyzing reservation behavior, we shed light on the actual commitments states make. Moreover, by disaggregating treaties into their basic building blocks, individual provisions, we

are able to show that states take into account the nature of particular obligations when they ratify.

We theorized that demanding obligations enhance the likelihood of reservation. In the regression analysis, we found support for our expectations about provisions that are strong, precise and stipulate domestic action. Our secondary hypothesis, regarding provisions subject to non-derogation clauses, was not supported. There are several reasons why states may not be more likely to reserve against obligations that are subject to a non-derogation clause. First, only 21 obligations – of 872 obligations in our data – are subject to a non-derogation clause. Thus, there may simply be too few opportunities for states to reserve against such obligations and, accordingly, too few observations for us to detect a statistically significant relationship. Second, states may make reservation decisions based on what *obligations are acceptable to them in general* and not on the basis of what obligations they can and cannot suspend should they face a political crisis or emergency. Third, many non-derogation clauses cover *jus cogens*, or peremptory norms, such as the prohibition of torture at all times and in all places. If a state cannot commit to such obligations, they may simply not ratify rather than ratify with reservation. Relatedly, entering reservations against obligations covered by a non-derogation clause may be interpreted as contravening the object and purpose of a treaty, making reservations unacceptable, per the Vienna Convention, and opening up to scrutiny and sanction states that attempt to enter them.

In contrast to previous studies, with the exception of common law tradition, we did not find a consistent relationship between domestic institutions and reservations. States with higher levels of judicial independence may not be more likely to enter reservations against treaty obligations because *courts' ability* to apply a horizontal check on the executive and the legislature may be less important than *courts' basis* for doing so; that is, the extent to which obligations to which a state has committed itself are demanding. Our results suggest that the mere fact of judicial independence is not determining, while the extent to which obligations are demanding is.

Lastly, states where the legal status of treaties is equal or superior to domestic statute may

not be more likely to enter reservations because, as we argue, there is *variation across provisions within a single treaty*. Accordingly, should a country ratify or accede to a treaty, its status vis-à-vis domestic laws may matter less than the specific actions and behaviors that the treaty obliges or prohibits. Put another way, the legal status of treaties may be secondary to states' ability to modulate the obligations that would, at a later date, be evaluated against domestic statute.

Collectively, the results suggest that the textual content of specific provisions—the building blocks of human rights treaties—matters for how states calibrate their human rights treaty obligations through reservations. Our analysis thus produces a new finding: that states take seriously their treaty obligations at the level of individual provisions. States are more likely to exclude or alter the legal effect of obligations that are strong, precise, and stipulate domestic action. As we conclude, it is important to note that, though our analysis focuses on empirical questions, a central normative concern regarding human rights treaty reservations is whether they undermine the universality of human rights norms. What does it mean for the global human rights regime if states can weaken or opt out of some of its obligations, which are supposed to apply to all persons in all places? That question remains an important issue for further exploration.

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