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General Principles Regarding the Legal Validity of RUDs

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EXECUTIVE SUMMARY

This paper examines the legal validity of reservations, understandings, and declarations (RUDs) in both U.S. and international courts. The analysis is based on 46 U.S. cases discussing RUDs as a general category and 26 U.S. cases discussing interpretative understandings and declarations, out of approximately 650 reviewed cases. The analysis is also based on 13 cases from international courts out of approximately 300 reviewed cases, including cases from the International Court of Justice (ICJ), the United Nations Convention on the Law of the Sea (UNCLOS) tribunal and arbitral bodies, the European Court of Human Rights, and the Inter-American Court of Human Rights.

In the U.S. cases, RUDs are nearly always recognized as valid. For example, non-self-execution reservations in the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR) are usually treated as legally controlling. The same is true for the reservation to the ICCPR that reserves the right to use capital punishment on juveniles despite treaty prohibitions, as well as interpretative understandings and declarations defining specific terms used in the CAT. U.S. courts have only questioned the validity of RUDs when they were not properly communicated to other state parties, did not support a contrary interpretation, or focused on issues of wholly domestic concern (although the only case on this point was vacated and is not precedential). In addition, individual circuit judges, writing in dissent, have examined whether RUDs violate the separation of powers principle or are inconsistent with the treaty language and international law.

With few exceptions, international courts also usually defer to RUDs. The ICJ has indicated that it can invalidate a reservation as incompatible with the object and purpose of a treaty pursuant to Article 19 of the Vienna Convention on the Law of the Treaties. Yet the ICJ has only invalidated a RUD when it determined that a reservation was in fact an interpretative declaration (as opposed to a reservation modifying the state's legal obligations under the treaty). This has been particularly important in cases where the treaty in question prohibits reservations, such as the UNCLOS. Rules stipulated by a treaty also shape how other courts review RUDs. The European Court of Human Rights, for instance, applies treaty rules to invalidate RUDs that are of a general character or fail to include a statement of the law concerned.

Following a number of practices can reduce a RUD's vulnerability to invalidation in U.S. and international courts. For U.S. courts, a RUD is extremely unlikely to be questioned if it is documented clearly at the time of ratification and communicated to all treaty parties at the time of ratification. For international courts, a RUD is unlikely to be questioned if, in addition to the above factors, it is not counter to the "object and purpose" of a treaty, it is not objected to by other parties, and it is not a reservation masquerading as an interpretive declaration in a situation where reservations are prohibited by the relevant treaty.

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INTRODUCTION

Reservations, understandings, and declarations (RUDs) are, loosely defined, attachments on international treaties made by a ratifying state that clarify or alter the legal effect of treaty provisions. Given the increasing number of multilateral treaties, RUDs have allowed the United States to ratify treaties without assuming international obligations that might conflict with domestic obligations or otherwise place the government in a difficult legal or political position. The United States commonly employs RUDs, as do many other states.[2]

The analysis is based on 46 U.S. cases discussing RUDs as a general category and 26 U.S. cases discussing interpretative understandings and declarations out of approximately 650 reviewed cases. The analysis is also based on 13 cases from international courts out of approximately 300 reviewed cases, including cases from the International Court of Justice (ICJ), the United Nations Convention on the Law of the Sea (UNCLOS) tribunal and arbitral bodies, the European Court of Human Rights, and the Inter-American Court of Human Rights.[3]

Part I explains that in U.S. courts, RUDs are nearly always recognized as valid. For example, non-self-execution reservations in the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR) are usually treated as legally controlling. The same is true for the reservation to the ICCPR that reserves the right to use capital punishment on juveniles despite treaty prohibitions, as well as interpretative understandings and declarations defining specific terms used in the CAT. U.S. courts have only questioned the validity of RUDs when they were not properly communicated to other state parties, did not support a contrary interpretation, or focused on issues of wholly domestic concern (although the only case on this point was vacated and is not precedential). In addition, individual circuit judges, writing in dissent, have examined whether RUDs violate the separation of powers principle or are inconsistent with the treaty language and international law.

Part II explains that, with a few exceptions, international courts also usually defer to RUDs. The ICJ has indicated that it can invalidate a reservation as incompatible with the object and purpose of a treaty pursuant to Article 19 of the Vienna Convention on the Law of the Treaties. Yet the ICJ has only invalidated a RUD when it determined that a reservation was in fact an interpretative declaration (as opposed to a reservation modifying the state's legal obligations under the treaty). This has been particularly important in cases where the treaty in question prohibits reservations, such as the UNCLOS. Rules stipulated by a treaty also shape how other courts review RUDs. The European Court of Human Rights, for instance, applies treaty rules to invalidate RUDs that are of a general character or fail to include a statement of the law concerned.

Part III provides recommendations for drafting RUDs to reduce their vulnerability to invalidation based on the principles drawn from the case law.

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[2] *See, e.g.*, Jack Goldsmith, *The Unexceptional U.S. Human Rights RUDs*, 3 U. ST. THOMAS L.J. 311 (2005) (documenting that the U.S. practice of RUDs is common among liberal democracies).

[3] The methodology used for locating and reviewing these cases is discussed in Appendix A. The cases reviewed are listed in Appendix B.

I. THE ENFORCEABILITY OF RUDS IN U.S. COURTS

When the U.S. Senate grants its advice and consent to Article II treaties, it frequently does so with certain conditions attached; these conditions are usually described as reservations, understandings, and declarations.[4] Reservations are generally defined as qualifications that "change U.S. obligations without necessarily changing the text."[5] Meanwhile, understandings are "interpretative statements that clarify or elaborate provisions but do not alter them," and declarations are "statements expressing the Senate's position or opinion on matters relating to issues raised by the treaty rather than to specific provisions."[6] This Part describes the prevailing view in U.S. case law is that RUDs are valid and enforceable in U.S. courts and discusses the few instances in which a RUD's validity has been questioned.

A. RUDs Are Valid and Enforceable in U.S. Courts

U.S. courts consistently recognize the validity of RUDs. They are observed to be legally binding as a condition of the Senate's advice and consent.[7] If the Senate conditions its approval of a treaty upon certain RUDs, the President can ratify the treaty only with those RUDs. This has been the long-term understanding of the constitutional arrangement,[8] as acknowledged by Justice Scalia in a concurrence in *United States v. Stuart*.[9] The mandatory and binding nature of RUDs is also consistent with and endorsed by the Third Restatement of the Foreign Relations Law.[10]

1. U.S. Supreme Court Precedent

The U.S. Supreme Court has never expressly ruled on the validity of RUDs, but it has implicitly recognized their validity by enforcing them.

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[4] Some scholars have recognized as many as twelve types of conditions: amendments, conditions, declarations, exceptions, exclusions, explanations, interpretations, provisos, recommendations, reservations, statements, and understandings. Kevin C. Kennedy, *Conditional Approval of Treaties by the U.S. Senate*, 19 LOY. L.A. INT'L & COMP. L.J. 89 (1996).

[5] Cong. Research Serv., Treaties and Other International Agreements: The Role of the United States Senate, Sen. Comm. Print 106-71 at 11 (Jan. 2, 2001), available at http://www.gpo.gov/fdsys/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf.

[6] *Id.*

[7] A President may introduce RUDs, but they are usually the product of the Senate's treaty approval process.

[8] Kennedy, *supra* note 4, at 94-95.

[9] 489 U.S. 353, 374-75 (1989) (Scalia, J., concurring) ("Of course the Senate has unquestioned power to enforce its own understanding of treaties. It may, in the form of a resolution, give its consent on the basis of conditions. If these are agreed to by the President and accepted by the other contracting parties, they become part of the treaty and of the law of the United States . . . If they are not agreed to by the President, his only constitutionally permissible course is to decline to ratify the treaty, and his ratification without the conditions would presumably provide the basis for impeachment.").

[10] RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 314(1)-(2) (1987) ("(1) When the Senate of the United States gives its advice and consent to a treaty on condition that the United States enter a reservation, the President, if he makes the treaty, must include the reservation in the instrument of ratification or accession, or otherwise manifest that the adherence of the United States is subject to the reservation. (2) When the Senate gives its advice and consent to a treaty on the basis of a particular understanding of its meaning, the President, if he makes the treaty, must do so on the basis of the Senate's understanding.").

In *Sosa v. Alvarez-Machain*, the Court affirmatively acknowledged a treaty reservation. It explained that the Senate granted its advice and consent to the ICCPR with a reservation providing that the treaty was not self-executing and therefore did not create obligations enforceable in the federal courts.[11] The Court observed, "Several times, indeed, the Senate has expressly declined to give the federal courts the task of interpreting and applying international human rights law, as when its ratification of the [ICCPR] declared that the substantive provisions of the document were not self-executing."[12] The Court held that "although the Covenant does bind the United States as a matter of international law, the United States ratified the Covenant on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts. . . . Accordingly, Alvarez cannot say that the [Universal] Declaration [of Human Rights] and [ICCPR] themselves establish the relevant and applicable rule of international law."[13]

The Court also weighed in at least twice on interpretative understandings and declarations. In 1853, the Court held in *Doe v. Braden* that written declarations explaining ambiguous language that are then ratified by the other party become a part of the treaty and are therefore obligatory.[14] Almost a century later, the Court recognized a declaration at the time of the Senate advice and consent process "providing that nothing in the treaty should be construed to" have any meaning beyond what the qualification specified.[15] Although the Court referred to the declaration as an amendment, the language suggests that the qualifier was in fact an interpretative declaration.[16] These two cases are the most persuasive authority that interpretative understandings and declarations constitute a part of the treaty and should therefore be enforced as part of the treaty obligation, at least when the RUD has received bilateral assent.

2. Lower U.S. Court Precedent

Lower courts have consistently upheld RUDs. For example, U.S. lower courts have repeatedly upheld reservations and declarations stating that certain articles of treaties or entire

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[11] 542 U.S. 692 (2004).
[12] *Id.* at 728.
[13] *Id.* at 735.
[14] 57 U.S. 635, 656 (1853) ("For it is too plain for argument that where one of the parties to a treaty, at the time of its ratification annexes a written declaration explaining ambiguous language in the instrument or adding a new and distinct stipulation, and the treaty is afterwards ratified by the other party with the declaration attached to it, and the ratifications duly exchanged – the declaration thus annexed is part of the treaty and as binding and obligatory as if it were inserted in the body of the instrument. The intention of the parties is to be gathered from the whole instrument, as it stood when the ratifications were exchanged.").
[15] Nw. Bands of Shoshone Indians v. United States, 324 U.S. 335, 368 (1945).
[16] *Id.* at 368-69 ("To four [treaties], including the Box Elder Treaty, the Senate added an amendment providing that nothing in the treaty should be construed to admit 'any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof.' . . . Whatever may have been the complexities of the Mexican cession title situation as described in the opinion of this Court, the Senate by this amendment clearly indicated that it understood each treaty to constitute a recognition of Indian title to the land claimed, at least as to lands outside the Mexican cession. Had the Senate been under the impression that no title rights were involved in the treaties it would have been meaningless to add this amendment.").

treaties are "non-self-executing,"[17] most prominently in cases involving the ICCPR.[18] In addition, courts have consistently upheld the reservation to the ICCPR retaining the right of the United States to impose capital punishment on juveniles below eighteen years of age, even though the ICCPR prohibits this practice.[19]

With regard to interpretative understandings and declarations, most case law comes from interpretations of the CAT indirectly through litigation under the Foreign Affairs Reform and Structuring Act of 1998 (FARRA). The Senate ratified the CAT with a number of understandings, which were then mirrored in FARRA.[20] Essentially, FARRA made the CAT's terms enforceable in U.S. courts, which in turn required U.S. courts to interpret the CAT's understandings. Consequently, in *Auguste v. Ridge*, the Third Circuit applied the U.S. "understanding" that torture must include a specific intent element.[21] The Second Circuit cited *Auguste* in reaching the same conclusion two years later.[22] The Ninth Circuit has similarly upheld interpretations of Article 3's "substantial grounds for believing that he would be in danger" to mean "if it is more likely than not that he would be tortured," a critical distinction for

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[17] Judges and scholars often refer to non-self-executing provisions as both reservations and declarations. The distinguishing factor is mainly one of definition: "Whether the non-self-execution declaration is a reservation or not depends on the definition of non-self-execution being used. When the President (or Senate) defined the non-self-execution declaration in the sense that the U.S.' obligations under the ICCPR would provide no further substantive rights protection, this definition clearly would make the declaration a reservation. On the other hand, when the declaration is defined in the sense that the U.S.' obligations under the ICCPR would not create new private causes of action, the declaration is not a reservation." FRANCISCO FORREST MARTIN ET AL., INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW: TREATIES, CASES, AND ANALYSIS 226 n.30 (2006).

[18] *See, e.g.*, Igartúa v. United States, 626 F.3d 592 (1st Cir. 2010) (upholding non-self-executing status of ICCPR); Guaylupo-Moya v. Gonzales, 423 F.3d 121 (2d Cir. 2005) (accepting ICCPR as non-self-executing per RUDs).

[19] *See, e.g.*, Hain v. Gibson, 287 F.3d 1224 (10th Cir. 2002) (upholding Senate reservations of right to impose death penalty on juvenile offenders); Beazley v. Johnson, 242 F.3d 248 (5th Cir. 2001) (upholding reservations and declarations as valid for imposing death penalty even on those below eighteen years of age). The U.S. Supreme Court later held in *Roper v. Simmons* that it is unconstitutional, per the Eighth Amendment, to impose capital punishment for crimes committed while under the age of eighteen. 543 U.S. 551 (2005). The majority did not find the reservation persuasive as evidence against a national consensus to juvenile executions. *Id.* at 567 ("The reservation to Article 6(5) of the ICCPR provides minimal evidence that there is not now a national consensus against juvenile executions."). The dissent, on the other hand, cited the reservation as evidence that there was no national consensus. *Id.* at 622-23 (Scalia, J., dissenting) ("That the Senate and the President—those actors our Constitution empowers to enter into treaties, see Art. II, § 2—have declined to join and ratify treaties prohibiting execution of under-18 offenders can only suggest that our country has either not reached a national consensus on the question, or has reached a consensus contrary to what the Court announces. That the reservation to the ICCPR was made in 1992 does not suggest otherwise, since the reservation still remains in place today.").

[20] 8 Pub. L. No. 105-277, 112 Stat. 2681-761 (codified as amended in scattered sections of 8 U.S.C.).

[21] 395 F.3d 123, 142 (3d Cir. 2005) ("Thus, we are presented with a situation where both the President and the Senate, the two institutions of the federal government with constitutional roles in the treaty-making process, agreed during the ratification stage that their understanding of the definition of torture contained in Article 1 of the Convention included a specific intent requirement. In our view, this is enough to require that the understanding accompanying the United States' ratification of the Convention be given domestic legal effect, regardless of any contention that the understanding may be invalid under international norms governing the formation of treaties or the terms of the Convention itself.").

[22] Pierre v. Gonzales, 502 F.3d 109, 120 (2d Cir. 2007) ("By announcing its understandings, the Senate implicitly recognized that the treaty wording would benefit from clarification. Those understandings are the indispensable premise for the implementation of the CAT as domestic law. The agency is bound by them, and we defer to the agency's reasonable interpretation of them[.]").

purposes of *refoulement*.[23] While in each of these cases the courts were applying FARRA, the court's treatment of the understandings as legally dispositive of FARRA's meaning and without any question of invalidity suggest that the CAT's understandings are indeed valid.

Courts interpreting and enforcing other prominent multilateral treaties have also cited interpretative understandings and declarations in their decisions. The District Court for the Eastern District of New York, for example, held that the use of herbicides did not constitute genocide in part by referring to the U.S. interpretative understanding that specific intent is required for genocide to be committed under the Genocide Convention.[24] Similarly, in 1928, the District Court for the District of Maryland interpreted a treaty in part by acknowledging the principle that an interpretative understanding could still be binding as an interpretation of a treaty's meaning even if it did not constitute a reservation *per se*.[25] It should be noted that this particular understanding had also been agreed upon bilaterally, and whether this principle could also apply for unilateral understandings was not addressed. Such a unilateral understanding could instead be subject to challenge, as discussed in the next Section.

B. Challenges to the Validity and Enforceability of RUDs in U.S. Courts

RUDs are almost always enforced by U.S. courts, but there have been a few discrete instances in which a RUD has been questioned. The significance of these few cases should not be overstated, however, given that none of these cases invalidated a recognized RUD. The only opinions not giving effect to a RUD occurred where (1) the treaty condition was never communicated to other treaty parties and (2) the reservation only addressed matters of domestic concern (although this case is not binding precedent, as it was vacated on other grounds). Two judges on the Second Circuit have questioned the validity of RUDs practice as a whole, but only in dissenting opinions.

Lower courts have raised questions about treaty conditions that were not communicated to other parties and subsequent interpretations not supported by the text. The Federal Circuit Court of Appeals and the Court of Claims both reasoned that a "Technical Explanation" in a treaty could not be controlling where it appeared that only the United States had been privy to the documents.[26] Furthermore, the Court of Claims determined that it was unlikely that the

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[23] Trinidad y Garcia v. Thomas, 683 F.3d 952, 985 (9th Cir. 2012) ("The Senate ratified CAT with the understanding that the phrase, where there are substantial grounds for believing that he would be in danger of being subjected to torture, would be understood to mean if it is more likely than not that he would be tortured.") (internal quotation marks omitted). Such understandings have also been applied by the district courts. *See, e.g.*, Thelemaque v. Ashcroft, 363 F. Supp. 2d 198, 208-09 (D. Conn. 2005).

[24] In re Agent Orange Product Liab. Litig., 373 F. Supp. 2d 7 (E.D.N.Y. 2005).

[25] Gen. Elec. Co. v. Robertson, 25 F.2d 146, 154 (D. Md. 1928), *rev'd on other grounds*, 32 F.2d 495 (4th Cir. 1929) ("[T]he plaintiffs very properly point out that the language quoted from the Senate Resolution is not, strictly speaking, a reservation on the part of the Senate, but an interpretation of the meaning of the treaty, and that, subsequent to the Senate's action, the President ratified the treaty, subject to the understanding recited, and thereafter the treaty was ratified by Germany.").

[26] Xerox Corp. v. United States, 41 F.3d 647, 656 (Fed. Cir. 1994) ("The government refers to the affidavit of a Treasury employee and member of the United States negotiating team, Steven P. Hannes, who stated that 'copies of the Technical Explanation would have been sent to the U.K. negotiators.' No evidence of such 'sending' was provided, and it must be assumed that the Treasury's files contained no such support. On this extremely one-sided

United States contemplated the scenario that had since occurred "at the time of Treaty ratification."[27] It therefore found that the government's proposed interpretation could not be read into the RUD.

In *Power Authority of New York v. Federal Power Commission*, the D.C. Circuit did not give effect to a reservation.[28] The U.S. Supreme Court vacated the judgment, remanding the decision "with directions to dismiss the petition upon the ground that the cause is moot."[29] The decision is therefore not valid precedent, and other courts have not since followed its logic. While vacated, *Power Authority* may provide some insight into the potential skepticism of courts when a reservation does not pertain to relations with other nations or otherwise alter the effect of the treaty with regards to any other party.[30] The D.C. Circuit held that what appeared to be a reservation was not in fact a reservation, given that it was of wholly domestic concern.[31]

Finally, in *Igartúa-de la Rosa v. United States*,[32] two judges writing in dissent determined that RUDs can be invalid in light of the Supremacy Clause.[33] Judge Juan Torruella wrote that "the United States is not in compliance with the binding obligation it undertook by signing and ratifying the ICCPR. The majority does not and cannot refute this undeniable facts and . . . the potentially non-self-executing nature of the ICCPR does not preclude our ability to make a declaration to that effect."[34] Also dissenting, Judge Jeffrey Howard wrote that "separation of powers considerations prevent a court from relying exclusively on the Senate's declaration . . . The Supremacy Clause and Article III require a court to examine independently the intentions of the treaty makers to decide if a treaty, by its own force, creates individually enforceable rights."[35] Judge Torruella expressed the same argument again five years later.[36] These continue to be minority viewpoints and have not been endorsed in any binding decision.

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record, it would violate any reasonable canon of construction to infer mutual assent by the signatories to the position taken by the Treasury."); Nat'l Westminster Bank, PLC v. United States, 58 Fed. Cl. 491, 499 (2003) ("[E]ven if the court were to read these statements more broadly, the unilateral views of the U.S. are not controlling. As noted above, the court must give meaning to the intent of the treaty partners, not simply the views of the U.S.").

[27] Nat'l Westminster Bank, PLC, 58 Fed. Cl. at 499.

[28] Power Auth. of N.Y. v. Fed. Power Comm'n, 247 F.2d 538 (D.C. Cir. 1957).

[29] American Public Power Ass'n v. Power Auth. of N.Y., 355 U.S. 64 (1957).

[30] *Id.* at 542. The court's reasoning in *Power Authority* suggests that a treaty could be considered valid and enforceable even after a reservation was invalidated. The majority in *Power Authority* cited *New York Indians*, 170 U.S. 1 (1898), for the proposition that a treaty could still bind the United States even if a reservation had been invalidated, though how much such a holding could also apply beyond treaties with Indian tribes remained unaddressed.

[31] *Power Auth. of N.Y.*, 247 F.2d 538.

[32] 417 F.3d 145 (1st Cir. 2005).

[33] U.S. CONST. art. VI ("This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land . . . .").

[34] *Id.* at 175 (Torruella, J., dissenting).

[35] *Id.* at 185-86 (Howard, J., dissenting).

[36] Igartúa v. United States, 626 F.3d 592, 625 (2010) (Torruella, J., dissenting) ("The Senate's declaration that the ICCPR is non-self-executing is *ultra vires* with respect to the ratification process and as such that declaration is not binding on the courts, who are required to exercise their independent judicial power under the Supremacy Clause in interpreting the meaning and import of all treaties entered into by the United States.").

The cases reviewed in this Section are the exceptions. U.S. courts can usually be expected to treat a RUD as binding.

II. THE ENFORCEABILITY OF RUDS IN INTERNATIONAL COURTS

Unlike U.S. courts, where RUDs are often treated as a conglomerate entity, the distinction between reservations and interpretative declarations is much more marked in international jurisprudence. Additionally, whether a statement in a ratification resolution ends up being construed as a reservation or interpretative declaration is frequently the deciding factor as to whether its validity will be upheld if challenged in an international court.

The International Law Commission's (ILC) *Guide to Practice on Reservations to Treaties* provides helpful definitions. It defines a "reservation" as a unilateral statement "made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty . . . whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization."[37] The ILC distinguishes an "interpretative declaration" as a unilateral statement "made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions."[38]

Whether a statement is titled a "reservation" or a "declaration" is less important than how it operates. According to the ILC, "[t]he character of a unilateral statement as a reservation or as an interpretative declaration is determined by the legal effect that its author purports to produce," which should be determined by interpreting the statement "in good faith in accordance with the ordinary meaning to be given to its terms, with a view to identifying therefrom the intention of its author, in light of the treaty to which it refers."[39] Still, the abstract definitions may not prove particularly helpful, given that the guidance essentially involves a circular logic distinguishing the two terms using their own definitions.

The international case law demonstrates how courts have discerned a difference in practice. The ICJ cases, which are arguably most prominent in discussing reservations and interpretative declarations, are discussed first, followed by cases from other international courts. This Part concludes with a discussion of the legal effect of objections.

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[37] Rep. of the Int'l Law Comm'n, 63d Sess., April 26-June 3, July 4-Aug. 12, 2011, ¶ 1.1, U.N. Doc. A/66/10/Add.1; GAOR, 66th Sess., Supp. No. 10 (2011). ILC documents are not legally binding but are frequently treated as helpful interpretive tools.

[38] *Id.* ¶ 1.2.

[39] *Id.* ¶ 1.3-1.3.1; *see also* Edward T. Swaine, *Treaty Reservations*, *in* THE OXFORD GUIDE TO TREATIES 279 (Duncan B. Hollis, ed., 2012) ("Reservations are classified by their attempted effect rather than their billing; in the words of the [Vienna Convention on the Law of Treaties], a reservation 'purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State'. Reservations are thus distinguishable from two other devices that States frequently deploy in consenting to treaties: (i) interpretative declarations (or 'understandings') and (ii) (other) unilateral statements.").

A. ICJ Jurisprudence

According to Article 19 of the Vienna Convention on the Law of Treaties, "[a] State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless . . . "the reservation is prohibited by the treaty . . . [or] the reservation is incompatible with the object and purpose of the treaty."[40] It is standard practice for international courts to ask whether reservations to treaties where otherwise not prohibited are compatible "with the object and purpose of the treaty."[41] If it is compatible, the reservation is generally honored (although a few dissenting judges, as described below, have suggested other exceptions). If not, the court will find the reservation violates Article 19 and is therefore invalid.

In evaluating ratification statements, international courts generally defer to state intentions. In the *Fisheries Jurisdiction Case*, the ICJ explained that it will interpret a reservation in a natural and reasonable way with regard to the intention of the state when it ratified the treaty.[42] In *Case Concerning Border & Transborder Armed Actions*, Honduras tried to argue that the U.S. reservation to the Pact of Bogotá was not a reservation but was, in fact, an interpretative declaration.[43] The ICJ disagreed, holding that the U.S. reservation was valid as a limitation to ICJ jurisdiction per a previous reservation the United States had already made under Article 36.[44] Similarly, in *Armed Activities*, the ICJ held that Rwanda could make a reservation to Article IX of the Genocide Convention limiting the ICJ's jurisdiction.[45] The Court cited two cases,

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[40] Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].
[41] *Id.*
[42] Fisheries Jurisdiction Case (Spain v. Can.), 1998 I.C.J. 432, ¶ 49 (Dec. 4) ("The Court will thus interpret the relevant words of a declaration including a reservation contained therein in a natural and reasonable way, having due regard to the intention of the State concerned at the time when it accepted the compulsory jurisdiction of the Court. The intention of a reserving State may be deduced not only from the text of the relevant clause, but also from the context in which the clause is to be read, and an examination of evidence regarding the circumstances of its preparation and the purposes intended to be served.").
[43] Border & Transborder Armed Actions (Nicar. v. Hond.), Judgment, Jurisdiction and Admissibility, 1988 I.C.J. 69, ¶ 38 (Dec. 20) ("It is common ground between the Parties that if the Honduran interpretation of Article XXXI of the Pact be correct, this reservation would not modify the legal situation created by that Article, and therefore would not be necessary; Honduras argues however that it was not a true reservation, but merely an interpretative declaration.").
[44] *Id.* ¶ 39 ("[Honduras' argument] is inconsistent with the report, published by the United States Department of State, of the delegation of that country to the Conference of Bogotá, which stated that Article XXXI 'does not take into account the fact that various States in previous acceptances of the Court's jurisdiction under, Article 36, paragraph 2, of the Statute, have found it necessary to place certain limitations upon the jurisdiction thus accepted. This was the case in respect to the United States, and since the terms of its declaration had, in addition, received the previous advice and consent of the Senate, the delegation found it necessary to interpose a reservation to the effect that the acceptance of the jurisdiction of the Court as compulsory ipso facto and without special agreement is limited by any jurisdictional or other limitations contained in any declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court in force at the time of the submission of any case.").
[45] Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), Judgment, Jurisdiction and Admissibility, 2006 I.C.J. 6, ¶ 67 (Feb. 3) ("Rwanda's reservation to Article IX of the Genocide Convention bears on the jurisdiction of the Court, and does not affect substantive obligations relating to acts of genocide themselves under that Convention. In the circumstances of the present case, the Court cannot conclude that the reservation of Rwanda in question, which is meant to exclude a particular method of settling a dispute relating to the interpretation, application or fulfilment of the Convention, is to be regarded as being incompatible with the object and purpose of the Convention.").

Yugoslavia v. Spain and *Yugoslavia v. United States*, in which the Court had held as valid similar reservations by Spain and the United States against jurisdiction by the ICJ.[46]

Some judges have argued in dissents that reservations that are compatible with the object and purpose of a treaty may nonetheless be invalidated for other reasons. In his dissent to *Armed Activities*, Judge Abdul Koroma argued that reservations that are incompatible with the *raison d'être* of a treaty should be invalid.[47] Similarly, in *Yugoslavia v. United States*, Judge Milenko Kreća dissented to argue that *jus cogens* norms can and must override inconsistent reservations.[48] Judge Kreća clarified that he believed there was no difference between reservations and understandings in such an inquiry.[49]

Generally, interpretative declarations are also valid, at least to the extent they were agreed upon by the other treaty parties at the time of ratification. In the *Ambatielos Case*, the ICJ recognized a declaration that sought to interpret the treaty to be a binding part of the treaty.[50] Judge Levi Fernandes Carneiro, writing his own individual opinion in that case, stated explicitly that the declaration was interpretative and was a binding component of the treaty.[51]

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[46] Legality of Use of Force (Yugoslavia v. Spain), Order, Provisional Measures, 1999 I.C.J. 772, ¶¶ 32-33 (June 2); Legality of Use of Force (Yugoslavia v. U.S.), Order, Provisional Measures, 1999 I.C.J. 924, ¶¶ 24-25 (June 2).

[47] *Armed Activities*, 2006 I.C.J. at 55, ¶ 11 (dissenting opinion by Koroma, J.) ("While a reservation to a treaty clause concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty, it is incompatible if the provision to which the reservation relates constitutes the raison d'être of the treaty.").

[48] *Legality of Use of Force* (*Yugoslavia v. U.S.*), 1999 I.C.J. at 951, ¶ 9-10 (dissenting opinion by Kreća, J.) ("'Therefore, to the extent that any reservations to the Genocide Convention purport to derogate from the scope or nature of any State's obligations in respect of genocide, as set out in the core provisions of the Genocide Convention, those reservations would be void under the jus cogens doctrine.' . . . The norms of jus cogens are of an overriding character; thus, they make null and void any act, be it unilateral, bilateral or multilateral, which is not in accordance with them.") (quoting MARTIN M. SYCHOLD, *Ratification of the Genocide Convention: The Legal Effects in Light of Reservations and Objections*, *in* REVUE SUISSE DE DROIT INTERNATIONAL ET EUROPÉEN 551 (1998).

[49] *Id.*

[50] Ambatielos Case (Greece v. U.K.), Judgment, Preliminary Objection, 1952 I.C.J. 28, 44 (July 1) ("The intention of the Declaration was to prevent the new Treaty from being interpreted as coming into full force in this sweeping manner and thus prejudicing claims based on the older Treaty or the remedies provided for them. It follows that, for the proper interpretation or application of the provisions of the Treaty of 1926, some such words as 'Save as provided in the Declaration annexed to this Treaty' have to be read into Article 32 before the words 'It shall come into force.' Thus, the provisions of the Declaration are in the nature of an interpretation clause, and, as such, should be regarded as an integral part of the Treaty, even if this was not stated in terms. For these reasons, the Court holds that either expressly (by virtue of the United Kingdom's own instrument of ratification) or by necessary implication (from the very nature of the Declaration) the provisions of the Declaration are provisions of the Treaty within the meaning of Article 29.").

[51] *Id.* at 48, 52-53 (individual opinion by Levi Carneiro, J.) ("There is, however, I suppose, some doctrinal interest in emphasizing the juridical nature of this Declaration. It is—it must be so describe—according to a current expression, an 'interpretative declaration'. Declarations of this sort are often made by one of the parties concerned to define the attitude adopted towards a given treaty, a method of executing it. In the *British Year Book of International Law*, Mr. A. B. Lyons, referring to a declaration by the French Government on the most-favoured-nation clause, observed that the competent court had 'held that the interpretative declaration must be read with and deemed to form part of the text of the treaty and was binding on the courts.' The Declaration of 1926, which has been referred to, was signed by the same representatives of the two Governments who were signatories of the Treaty of the same date. It has the significance of an authentic interpretation, embodied in the Treaty itself. The Treaty consists of three parts—Articles, Customs Schedule and Declaration.").

However, it is possible that interpretative declarations may be more vulnerable to invalidation. In *Maritime Delimitation in the Black Sea*, the ICJ was asked to consider a ratification resolution made by Romania to UNCLOS, a treaty that prohibits reservations but allows interpretative declarations.[52] Romania had issued an interpretative declaration regarding Article 121,[53] which establishes the definition of an island as "a naturally formed area of land, surrounded by water, which is above water at high tide" and distinguishes rocks that cannot sustain human habitation or economic life of their own in Article 121(3) as not having an exclusive economic zone or continental shelf.[54] Romania attempted to use an interpretative declaration to create a more favorable delimiting boundary by not considering rocks as part of the delimitation of maritime spaces. In a devastating decision for Romania, ICJ held that the declaration could not modify the legal effect of the UNCLOS provisions.[55]

The holding in *Maritime Delimitation in the Black Sea* should not be overstated. The ICJ's aversion to giving more legal weight to the interpretative declaration in the *Black Sea* case may be due particularly to the UNCLOS prohibition on reservations. UNCLOS clearly placed considerable limitations on any ratification resolutions that would alter its legal effect. The ICJ therefore likely regarded this interpretive declaration as an effort to evade that treaty's prohibition on reservations and consequently invalidated it. While interpretative declarations may potentially be subject to greater scrutiny for enforceability than reservations, the *Ambatielos Case* may be more representative of the legal effect of interpretative declarations when reservations, and therefore interpretative declarations, are not prohibited.

B. Other International Court Jurisprudence

With a few limited exceptions, other international courts have found reservations to be valid. Exceptions often concern express limitations found within a treaty against certain types of reservations. Reservations that appear to violate those rules, as well as understandings and declarations that appear to sidestep these limitations—the aforementioned *Black Sea* case being a paradigm example—are invalidated. For example, consistent with the *Black Sea* case, and in the only published case found in this search on declarations discussed by UNCLOS tribunals apart from the ICJ, an arbitral tribunal held that a declaration from Russia to exclude certain disputes from court jurisdiction could be recognized but was limited by the treaty's text.[56]

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[52] United Nations Convention on the Law of the Sea art. 309, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS] ("No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention."); *id.* art. 310 ("Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.").

[53] Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009 I.C.J. 61, ¶ 35 (Feb. 3) ("Romania states that according to the requirements of equity—as it results from Articles 74 and 83 of the Convention on the Law of the Sea—the uninhabited islands without economic life can in no way affect the delimitation of the maritime spaces belonging to the mainland coasts of the coastal States.").

[54] UNCLOS, *supra* note 52, art. 121.

[55] Mar. Delimitation in the Black Sea, 2009 I.C.J. at ¶ 42.

[56] *In re* Arctic Sunrise Arbitration (Neth. v. Russ.), Case No. 2014-02, Award on Jurisdiction, ¶ 72, Permanent Court of Arbitration 2014, http://www.pcacases.com/web/sendAttach/1325 ("Russia's Declaration cannot create an

Various human rights courts also provide insight into the practice of reservations and declarations, but these courts should be understood as applying a particular treaty and its rules that may not be easily transferrable to other treaties and courts more broadly.

The European Court of Human Rights (ECtHR) has invalidated reservations and declarations that do not conform to the European Convention on Human Rights (ECHR) requirements regarding reservations. The ECHR prohibits "[r]eservations of a general character" and requires "a brief statement of the law concerned" for any reservation.[57] The ECtHR Grand Chamber explained that the Article limits the ability of States to make reservations excluding areas of law from supervision by "Convention institutions."[58] The ECtHR has invalidated two Swiss reservations: one for not conforming to the requirement to append a brief statement of the law concerned,[59] and one about the meaning of a fair trial for being a reservation of a general character.[60] In both cases, the ECtHR held that Switzerland was still bound to the Convention.

The Inter-American Court of Human Rights (IACtHR) conducts a similar inquiry as to whether reservations are compatible with the American Convention on Human Rights and has invalidated incompatible reservations, although its inquiry appears to be less searching than ECtHR's review.[61] Scrutinized reservations tend to be those that are "general in scope, which

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exclusion that is wider in scope than what is permitted by article 298(1)(b)."), http://www.pcacases.com/web/sendAttach/1325.

[57] Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, art. 57, Sept. 3, 1953, 213 U.N.T.S. 221.

[58] Loizidou v. Turkey, App. No-15318/89, ¶ 77 (Eur. Ct. H.R. Mar. 23, 1995) ("In the Court's view, the existence of such a restrictive clause governing reservations suggests that States could not qualify their acceptance of the optional clauses thereby effectively excluding areas of their law and practice within their 'jurisdiction' from supervision by the Convention institutions. The inequality between Contracting States which the permissibility of such qualified acceptances might create would, moreover, run counter to the aim, as expressed in the Preamble to the Convention, to achieve greater unity in the maintenance and further realisation of human rights.").

[59] Weber v. Switzerland, App. No. 11034/84, ¶ 38, 60 (Eur. Ct. H.R. May 22, 1990) ("Clearly [the reservation] does not fulfil one of [the requirements of Article 64], as the Swiss Government did not append 'a brief statement of the law [or laws] concerned' to it. . . . Disregarding it is a breach not of 'a purely formal requirement' but of 'a condition of substance.' . . . The material reservation by Switzerland must accordingly be regarded as invalid.").

[60] Belilos v. Switzerland, App No. 10328/83, ¶ 55 (Eur. Ct. H.R. 4, Apr. 29, 1988) ("The words 'ultimate control by the judiciary over the acts or decisions of the public authorities relating to [civil] rights or obligations or the determination of [a criminal] charge' do not make it possible for the scope of the undertaking by Switzerland to be ascertained exactly, in particular as to which categories of dispute are included and as to whether or not the 'ultimate control by the judiciary' takes in the facts of the case. They can therefore be interpreted in different ways, whereas Article 64 § 1 (art. 64-1) requires precision and clarity. In short, they fall foul of the rule that reservations must not be of a general character. . . . In short, the declaration in question does not satisfy two of the requirements of Article 64 (art. 64) of the Convention, with the result that it must be held to be invalid. At the same time, it is beyond doubt that Switzerland is, and regards itself as, bound by the Convention irrespective of the validity of the declaration.").

[61] *See* The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75), Advisory Opinion OC-2/82, Inter-Am. Ct. H.R. (Ser. A) No. 2, ¶ 37 (Sept. 24, 1982) ("Having concluded that reservations expressly authorized by Article 75, that is, reservations compatible with the object and purpose of the Convention, do not require acceptance by the States Parties, the Court is of the opinion that the instruments of ratification or adherence containing them enter into force, pursuant to Article 74, as of the moment of their deposit.").

completely subordinate[] the application of the American Convention to the internal legislation of [a state] as decided by its courts."[62] When assessing a reservation, the IACtHR has determined the reservation's meaning based on its text, even when a state argues for a different understanding.[63]

C. Objections

The Vienna Convention on the Law of Treaties provides for states' objections to other states' reservations. Article 20 establishes that consent by all parties to a given reservation is not always required for a treaty to enter into force, such as when the treaty expressly authorizes reservations. The Article notes that "[a] reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides."[64] Furthermore, there is also generally a twelve-month period for objecting to a reservation, after which other parties' tacit acceptance to a reservation will be assumed.[65] Article 21 lays out the conditions under which reservations and objections to reservations will have legal effect. When a state objects to another state's reservation but otherwise does not object to the treaty entering into force, the provisions to which the reservation relates will not apply between the two State parties to the extent of the reservation.[66]

While rare, states do make objections to other states' reservations. A small but not insignificant number of states have objected to U.S. reservations to multilateral treaties at the time of ratification, including objections from three states to U.S. reservations to the CAT.[67] The Netherlands, for instance, objected to the U.S. reservation to Article 16 of the CAT as incompatible with CAT's object and purpose and to the U.S. interpretation of "torture" under

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[62] Hilaire v. Trinidad and Tobago, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 81, ¶¶ 82, 88 (Sept. 1, 2001) ("Interpreting the Convention in accordance with its object and purpose, the Court must act in a manner that preserves the integrity of the mechanism provided for in Article 62(1) of the Convention. It would be unacceptable to subordinate the said mechanism to restrictions that would render the system for the protection of human rights established in the Convention and, as a result, the Court's jurisdictional role, inoperative.").

[63] Boyce v. Barbados, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 169 (Nov. 20, 2007) ("The Court has previously considered that 'a State reserves no more than what is contained in the text of the reservation itself.' In this case, the text of the reservation does not explicitly state whether a sentence of death is mandatory for the crime of murder, nor does it address whether other possible methods of execution or sentences are available under Barbadian law for such a crime. Accordingly, the Court finds that a textual interpretation of the reservation entered by Barbados at the time of ratification of the American Convention clearly indicates that this reservation was not intended to exclude from the jurisdiction of this Court neither the mandatory nature of the death penalty nor the particular form of execution by hanging. Thus the State may not avail itself of this reservation to that effect.").

[64] VCLT, *supra* note 40, art. 20.

[65] *Id.* art. 20(5) ("[A] reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.").

[66] *Id.* art. 21(3) ("When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.").

[67] Finland, the Netherlands, and Sweden objected. United Nations Treaty Collection, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Oct. 20, 2015, 6:50 AM). https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-9&chapter=4&lang=en.

Article 1 as invalid.[68] Similarly, eleven states objected to U.S. reservations to the ICCPR.[69] Germany, for instance, objected to the U.S. reservation to Article 6 allowing capital punishment for those under the years of eighteen.[70]

There is no indication in the reviewed case law that any U.S. court has ever cited an objection by another country to question a RUD's validity. Litigants have raised other states' objections to U.S. RUDs,[71] but these objections have not been treated as a basis for rejecting a RUD. The issue has not arisen for the United States in the international court cases reviewed.

III. RECOMMENDATIONS

The case law suggests that U.S. courts and international courts will almost always uphold a RUD as valid, with a few limited exceptions. This paper concludes with recommendations derived from the case law for increasing the likelihood that a RUD will be enforced:

A RUD will be less vulnerable to invalidation in a U.S. court where:

- it is documented clearly at the time of ratification; and
- it is communicated to all treaty parties.

A RUD will be less vulnerable to invalidation in an international court where:

- it includes all of the above factors for validity in a U.S. court;
- it is not counter to the "object and purpose" of a treaty;
- it is not objected to by other parties; and
- it is not a reservation masquerading as an interpretive declaration in a situation where reservations are prohibited by the relevant treaty (however, this reason has not been used to invalidate a RUD where there are no treaty rules against reservations).

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[68] *Id.*

[69] Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, and Sweden objected. United Nations Treaty Collection, International Covenant on Civil and Political Rights (Oct. 20, 2015, 6:30 AM), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

[70] *Id.*

[71] *See, e.g.*, *Auguste*, 395 F.3d at 141 ("Auguste also contends more generally that an understanding 'that conflicts with those of other signatory states [is] of little weight,' suggesting at one point that the fact that the Netherlands objected to the United States' understanding as overly restrictive should weigh in this Court's analysis.").

APPENDIX A: METHODOLOGY

The case survey relied upon for this paper began with an initial search using LexisNexis to find all cases that included all three words "reservations, understandings, and declarations." "RUDs" has become a common phrase in public international law and among courts over the last three decades. The reasoning was that courts commenting on these practices in a case would likely do so with the term "RUDs." The method was expected to provide a starting foundation for understanding how many courts have addressed the issue.

Documenting the U.S. Court of Appeals was a first priority given that these courts are most likely to comment doctrinally on and provide the most persuasive authority about RUDs status. The review of twenty-seven cases from the circuit courts triggered by the search term mostly commented on reservations, but a few also considered interpretative understandings and declarations. The search was then repeated for RUDs in all U.S. courts using the same LexisNexis search for cases that referenced all three words "reservations, understandings, and declarations." This search returned 393 cases, and after a review of them, twenty unique cases of particular relevance.

A new search string was then used to find cases on interpretative understandings and declarations as distinct from reservations. Given that interpretative understandings and declarations may be presented in cases without the use of the RUDs term, the search was broadened to consist of all federal court cases in LexisNexis with the following general search string:

"Treaty declar interpret understand senate ratif"

Unsurprisingly, the general search term returned over 10,000 results. Many of cases were not relevant, so only the first 250 cases of the search were examined as the highest ranked by the search algorithm. Of all the cases searched, only approximately 5% includes a treatment of declarations and understandings. For the first fifty cases, the relevant doctrine on treaty interpretation was pulled, even where there may not have been a readily available interpretative declaration or understanding. Within these decisions, there was considerable language regarding how the treaty was to be interpreted and whether the parties' interpretations should be granted weight beyond the strict language of the text. These cases, especially a few from the U.S. Supreme Court over the years, were important for grounding this analysis. For the remaining 200 cases, only those that had interpretative understandings and declarations were pulled and used for synthesizing general principles.

For the international case law, searches were conducted on both Westlaw and the Oxford Public International Law database using search terms including "reservations," "declarations," and "interpretative declarations." In total, approximately two dozen cases out of 300 relevant, and thirteen of those were most germane to the question of validity and enforceability of RUDs and discussed reservations and interpretative declarations in specific detail.

APPENDIX B: CASES REVIEWED

Domestic Court Cases on Reservations

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
1	Igartúa v. United States	2015 U.S. Dist. LEXIS 11368	2015	Puerto Rico District Court	International Covenant on Civil and Political Rights	Plaintiffs argue that the U.S. Constitution, international treaties (including ICCPR), and customary international law compel Defendants to take the necessary steps for the apportionment of congressional districts in Puerto Rico	Recognizing that no reservation was made excluding U.S. citizen-residents of Puerto Rico on basis of island's commonwealth status and therefore legal obligation hadn't been modified; says the First Circuit would need to find ICCPR self-executing before plaintiffs can allege a violation of a legally protected right
2	United States v. Ramirez	38 F. Supp. 3d 818	2014	Texas Southern District Court	Convention Against Torture	Refoulement case	Recognizes FARRA language including RUDs; does not comment on validity of RUDs
3	Lebron v. Rumsfeld	670 F.3d 540	2012	U.S. Court of Appeals for the Fourth Circuit	Convention Against Torture	U.S. citizen captured within the United States argues that he was unconstitutionally designated as an enemy combatant, and alleges a range of constitutional violations stemming from his ensuing military detention (does not refer to any specific treaty provision)	Quotes the Detainee Treatment Act of 2005 as mentioning that no individual shall be subject to cruel, inhuman or degrading treatment or punishment as defined by RUDs to CAT

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
4	Trinidad y Garcia v. Thomas	683 F.3d 952	2012	U.S. Court of Appeals for the Ninth Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Mention of RUDs in FARRA but no independent analysis
5	Sarei v. Rio Tinto, PLC	671 F.3d 736	2011	U.S. Court of Appeals for the Ninth Circuit	Convention on the Elimination of All Forms of Racial Discriminati on	U.S. Senate ratification resolution declaration that the Covenant was not self-executing	Upholds non-self-executing provision: "This declaration indicates that the treaty alone does not establish a norm sufficiently specific, universal, and obligatory to give rise to a cause of action under the [Alien Tort Statute], because the treaty provisions are not enforceable in our courts." (Note on Procedural History: This case was vacated and remanded by the U.S. Supreme Court in light of its decision in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013), but the Ninth Circuit sitting en banc came to the same decision, 722 F.3d 1109 (9th Cir. 2013).

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
6	Loggins v. Thomas	654 F.3d 1204	2011	U.S. Court of Appeals for the Eleventh Circuit	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution reservation: "That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding the treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of article 10 and paragraph 4 of article 14."	Court expressly recognizes RUDs reserving right, in exceptional circumstances, to treat juveniles as adults; Court says that a murder, especially one as vicious as the one in this case, is an exceptional circumstance justifying treatment of the juvenile as an adult
7	Ancient Coin Collectors Guild v. United States Customs & Border Prot.	801 F. Supp. 2d 383	2011	Maryland District Court	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property	The Senate gave its unanimous advice and consent to the Convention in 1972, subject to one reservation and six understandings	Recognizing one reservation and six understandings, including a reservation of the right "to determine whether or not to impose export controls over cultural property"; recognized non-self-executing status of the Convention

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
8	Igartúa v. United States	626 F.3d 592	2010	U.S. Court of Appeals for the First Circuit	International Covenant on Civil and Political Rights	Non-self-executing status of the ICCPR	Upholds non-self-executing status, but concurrence and dissent says that this is for courts to read and decide
9	Cherichel v. Holder	591 F.3d 1002	2010	U.S. Court of Appeals for the Eighth Circuit	Convention Against Torture	Senate ratification resolution understanding to the CAT, Articles 1 and 3: actual intent, acquiescence, and substantial grounds definitions	Use the understandings from Senate ratification for the definition of torture with intentional infliction as the definition
10	Edu v. Holder	624 F.3d 1137	2010	U.S. Court of Appeals for the Ninth Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Cited RUD of interpreting substantial grounds for believing to mean "if it is more likely than not that he would be tortured"
11	United States v. Belfast	611 F.3d 783	2010	U.S. Court of Appeals for the Eleventh Circuit	Convention Against Torture	Torture Act to implement U.S. obligations under the Convention Against Torture	Recognizes the valid adoption of the Convention Against Torture and acknowledges RUDs in the Convention
12	Garcia v. Benov	715 F. Supp. 2d 974	2009	California Central District Court	Convention Against Torture	Extradition case	Recognizes FARRA language including RUDs; does not comment on validity of RUDs

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
13	Pierre v. AG of the United States	528 F.3d 180	2008	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Acknowledges RUDs in CAT and that the Convention is not self-executing per RUDs in the Senate resolution to ratify
14	Khouzam v. AG of the United States	549 F.3d 235	2008	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Cites RUDs in footnote including non-self-executing status and understandings for Article 3
15	Villegas v. Mukasey	523 F.3d 984	2008	U.S. Court of Appeals for the Ninth Circuit	Convention Against Torture	U.S. Senate ratification resolution interpretation: "[T]he United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering . . . ." 136 Cong. Rec. S17, 486-01, S17,491 (1990)	Reaffirms *Zheng v. Ashcroft* and specifies that torture must require specific intent

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
16	Khouzam v. Hogan	529 F. Supp. 2d 543	2008	Pennsylvania Middle District Court	Convention Against Torture	Articles 1 through 16 of CAT are not self-executing, substantial grounds definition	Recognizes RUDs in Senate ratification of CAT (Note on Procedural History: This case was heard on appeal by the Third Circuit in entry #14 above).
17	Bisson v. UN	2008 U.S. Dist. LEXIS 9723	2008	United States District Court for the Southern District of New York	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution declaration that the Covenant was not self-executing	Recognizes ICCPR as non-self-executing
18	Pierre v. Gonzales	502 F.3d 109	2007	U.S. Court of Appeals for the Second Circuit	Convention Against Torture	Senate ratification resolution understanding to the CAT, Articles 1 and 3: actual intent, acquiescence, and substantial grounds definitions	Congress passed FARRA to recognize RUDs, and court says agency bound by them; court recognizes the RUDs
19	Silva-Rengifo v. AG of the United States	473 F.3d 58	2007	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Convention and its accompanying regulations must be read in conjunction with understandings prescribed by the Senate

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
20	Jaramillo-Mertinez v. AG of the United States	249 Fed. Appx. 933	2007	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Describes history of ratification and the ultimate RUD to determine the standard for awareness of torture under the CAT
21	United States v. Emmanuel	2007 U.S. Dist. LEXIS 48510	2007	U.S. District Court for the Southern District of Florida, Miami Division	Convention Against Torture	Interpretation of Torture Act and whether it implements CAT	Recognizes RUDS in Senate ratification of CAT, cites *Auguste* decision, and accepts understandings as incorporated into legislative scheme of statute that effectuated the Convention
22	San Chung Jo v. Gonzales	458 F.3d 104	2006	U.S. Court of Appeals for the Second Circuit	Convention Against Torture	Reflecting understanding explicitly stated in Senate's ratification of CAT regulations specify that "[i]n order to constitute torture," the act must be directed "against a person" and that the person must be "in the offender's custody or physical control"	Accepts FARRA's definition of torture, which defers to the RUDs

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
23	Filja v. Gonzales	447 F.3d 241	2006	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Cites *Auguste v. Ridge* for the detailed account of the UN's adoption of the CAT and its ratification by the United States
24	Aldana v. Del Monte Fresh Produce, N.A., Inc.	452 F.3d 1284	2006	U.S. Court of Appeals for the Eleventh Circuit	Convention Against Torture	Debate over whether there is a cause of action for a claim of cruel, inhuman, or degrading treatment or punishment under the Alien Tort Claims Act ("ATCA")	Case not focused on RUDs in particular but interesting dissent from denial of rehearing en banc that recognizes RUDs and argues that international law of *Sosa* creates universal, definable, and obligatory prohibition against cruel, inhuman, or degrading treatment or punishment, which is therefore actionable under the ATCA
25	Oluwa v. Sec'y of Cal.	2006 U.S. Dist. LEXIS 79853	2006	United States District Court for the Eastern District of California	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution declaration that the Covenant was not self-executing	Recognizes ICCPR as non-self-executing

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
26	Guaylupo-Moya v. Gonzales	423 F.3d 121	2005	U.S. Court of Appeals for the Second Circuit	International Covenant on Civil and Political Rights	RUDs declaring that ICCPR is not self-executing	Accepts ICCPR as non-self-executing per RUDs declaring that it is not self-executing
27	Skokomish Indian Tribe v. United States	401 F.3d 979	2005	U.S. Court of Appeals for the Ninth Circuit	Treaty of Point No Point	Tribe seeks monetary damages against the City and Tacoma Public Utilities for alleged treaty violations	Treaty of Point No Point and similar treaties "self-enforcing" and do not require implementing legislation to form the basis of a lawsuit; makes this determination by looking at language common to the treaties and language saying treaties shall be obligatory on contracting parties as soon as they are ratified; but City and Tacoma Public Utilities are not contracting parties

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
28	Thelemaque v. Ashcroft	363 F. Supp. 2d 198	2005	U.S. District Court for the District of Connecticut	Convention Against Torture	U.S. Senate ratification resolution interpretation: "[T]he United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering . . . ." 136 Cong. Rec. S17, 486-01, S17,491 (1990)	Recognizes RUDs in Senate ratification of CAT and acknowledges Justice Department's regulations as based on those RUDs
29	Khouzam v. Ashcroft	361 F.3d 161	2004	U.S. Court of Appeals for the Second Circuit	Convention Against Torture	Article 3 of the CAT prohibiting returning any person to a country in which it is more likely than not he or she will be in danger of being subjected to torture and acquiescence meant that the "public official, prior to the activity constituting torture, have knowledge of such activity and thereafter breach his legal responsibility to intervene to prevent such activity"	Supports Ninth Circuit's *Zheng v. Ashcroft* decision to say that Congress had spoken clearly its definition of torture

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
30	Kane v. Winn	319 F. Supp. 2d 162	2004	Massachusetts District Court	Convention Against Torture	Prisoner complaints abut deprivations that may implicate the Convention Against Torture	Refrains from deciding what effect RUDs have on relevant treaties and cites Henkin's article criticizing the practice; Court determines that "[r]egardless of whether and to what extent treaties or customary law can provide an implied cause of action, courts must approach prisoner cases under domestic law with an appreciation for the United States' international obligations"
31	Ogbudimkpa v. Ashcroft	342 F.3d 207	2003	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Acknowledges the RUDs and non-self-executing provision in CAT; in analyzing whether FARRA deprives the district court of *habeas* jurisdiction, court says whether CAT is not self-executing is irrelevant because of existence of FARRA
32	Zheng v. Ashcroft	332 F.3d 1186	2003	U.S. Court of Appeals for the Ninth Circuit	Convention Against Torture	Implementation of Article 3 of CAT (prohibitions on refoulement where there are substantial grounds for believing the individual would be in danger of torture)	Senate ratified CAT eliminating an understanding that acquiescence required a public official's knowledge and that it required only a public official's awareness

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
33	In re Extradition of Atuar	300 F. Supp. 2d 418	2003	West Virginia Southern District Court	Convention Against Torture	U.S. Senate ratification resolution statement that that the United States declares that provisions of articles 1 through 16 of the Convention are not self-executing	Recognizes RUDs in Senate ratification of CAT and FARRA incorporating Senate's declarations, including non-self-executing status
34	Reyes-Sanchez v. Ashcroft	261 F. Supp. 2d 276	2003	New York Southern District Court	Convention Against Torture	U.S. Senate ratification resolution understandings: actual intent and substantial ground interpretations	Recognizing RUDS in Senate ratification of CAT and FARRA and finding implementing regulations of CAT to be consistent with the reservations present; recognizes CAT as non-self-executing

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
35	Hain v. Gibson	287 F.3d 1224	2002	U.S. Court of Appeals for the Tenth Circuit	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution reservation to the ICCPR: "The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age."	Court expressly upholds the RUDs as valid for imposing capital punishment even to those below 18 years of age; also upholds non-self-executing
36	Beharry v. Reno	183 F. Supp. 2d 584	2002	New York Eastern District Court	International Covenant on Civil and Political Rights	ICCPR ratified with a RUD declaring that it would be non-self-executing	Recognizing that RUDs are controversial and that they have either been upheld or given some domestic effect even if found in non-self-executing treaties

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
37	Beazley v. Johnson	242 F.3d 248	2001	U.S. Court of Appeals for the Fifth Circuit	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution reservation to the ICCPR: "The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age."	Expressly upholds Senate reservations of right to impose a penalty of death on juvenile offenders and cites Supreme Courts of Alabama/Nevada

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
38	Patterson v. Johnson	2001 U.S. Dist. LEXIS 14159	2001	Texas Northern District Court	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution to the ICCPR: "The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age."	Cites the Fifth Circuit's decision in *Beazley* upholding reservation as valid
39	Rivera v. Warden	2001 U.S. Dist. LEXIS 24344	2001	Pennsylvania Middle District Court	International Covenant on Civil and Political Rights	U.S. Senate ratification resolution declaration that the Covenant was not self-executing	Recognizes that ICCPR was ratified with certain RUDs
40	Mu-Xing Wang v. Ashcroft	2001 U.S. Dist. LEXIS 21245	2001	Connecticut District Court	Convention Against Torture	U.S. Senate ratification resolution declaration that the Convention was not self-executing	Recognizes RUDs language in a footnote as part of Senate's resolution ratifying CAT

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41	United States v. Duarte-Acero	208 F.3d 1282	2000	U.S. Court of Appeals for the Eleventh Circuit	International Covenant on Civil and Political Rights	Contesting prosecution as violating double jeopardy provision of the ICCPR	Recognizing existence of RUDs and consent to ICCPR based on a non-self-executing declaration and therefore no bar
42	United States ex rel. Dearmas v. INS	2000 U.S. Dist. LEXIS 9456	2000	New York Southern District Court	Convention Against Torture	Petitioner moved to amend his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to add claims that (1) he is entitled to asylum pursuant to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment	Does not comment on validity of RUDs but cites RUDs
43	Sandhu v. Burke	2000 U.S. Dist. LEXIS 3584	2000	New York Southern District Court	Convention Against Torture	U.S. Senate ratification resolution declaration that the Convention was not self-executing	Recognizes RUDs language in a footnote as part of Senate's resolution ratifying CAT

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44	United Mexican States v. Woods	126 F.3d 1220	1997	U.S. Court of Appeals for the Ninth Circuit	International Covenant on Civil and Political Rights	Mexico contends treaty right violations, including the failure of Arizona officials to notify Martinez-Villareal of his rights under international law	Court acknowledges in footnote some question about the extent to which the specific language of Covenant binds U.S. given RUDs but overall cites Eleventh Amendment as providing immunity to a state from suit by a foreign government in federal court
45	Xuncanx v. Gramajo	886 F. Supp. 162	1995	United States District Court for the District of Massachusetts	Convention Against Torture	U.S. Senate ratification resolution reservation that the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States	Recognizes a reservation that ties the content of the abstract standard "cruel, inhuman, or degrading treatment" to domestic law tends to cut against idea of an international law universal norm

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
46	Coplin v. United States	6 Cl. Ct. 115	1984	Court of Claims	Panama Canal Treaty and Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal	Paragraph 2 of Article XV provides that "United States citizen employees [of the Panama Canal Commission] . . . . shall be exempt from any taxes . . . . on income received as a result of their work for the Commission." Article XV of an Implementation Agreement was argued to exempt only Panama from taxing Commission employees rather than both Panama and the United States	The court states that it would be "entirely inappropriate" to modify RUDs that were put in place at time of ratification and recognizes long history of reservations, and cites as fundamental that no state is bound in international law without its consent to the treaty; finds against the United States that the Implementation Agreement does in fact require exemption for taxes. (Note on Procedural History: The case was reversed by the Federal Circuit Court of Appeals in *Coplin v. United States*, 761 F.2d 688 (1985), after both parties to the treaty agreed that paragraph 2 did not exempt domestic taxation).

Domestic Court Cases on Interpretative Understandings and Declarations

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
47	Patterson v. Wagner	785 F.3d 1277	2015	Ninth Circuit Court of Appeals	Extradition Treaty between United States and South Korea	Article 6: "Extradition may be denied."; individual argues that evidence from the treaty's drafting and negotiating history demonstrate that Article 6 was intended to be a mandatory bar to untimely extradition requests	Text is only the beginning of an interpretation, and executive branch's interpretation of the issue, views of other contracting states, and the treaty's negotiation and drafting history is also present to ensure interpretation of text is not contradicted by other evidence of intent

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
48	Alaska v. Kerry	972 F. Supp. 2d 1111	2013	Alaska District Court	MARPOL (convention of the International Maritime Organization)	Annex VI designates ECAs, defined in the convention	Senate approved treaty with understanding that further amendments would be prospectively approved
49	Medellin v. Texas	552 U.S. 491	2008	U.S. Supreme Court	UN Charter Post-ratification Treaty	Presumption of non-self-executing status in the absence of text to the contrary	*Avena* judgment is not domestically binding because the Optional Protocol of the UN Charter was non-self-executing as interpreted by the Court by looking at the text, including confirmation by the post-ratification understanding of the signatory states
50	Pierre v. Gonzales	502 F.3d 109	2007	Second Circuit Court of Appeals	Convention Against Torture	Senate ratification: understands that in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering	Upholds the Senate's ratification for the purposes of interpreting FARRA and CAT

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
51	In re Gambino	421 F. Supp. 2d 283	2006	United States District Court for the District of Massachusetts	1983 Extradition Treaty with Italy	Non Bis in Idem: "Extradition shall not be granted when the person sought has been convicted, acquitted or pardoned, or has served the sentence imposed, by the Requested Party for the same acts for which extradition is requested."	History of the treaty, negotiations, and practical construction adopted by the parties can be used when there is no clear or single interpretation of the treaty based on the text
52	NRDC v. EPA	373 U.S. App. D.C. 223	2006	D.C. Circuit Court of Appeals	Montreal Protocol on Substances that Deplete the Ozone Layer	Decisions under the protocol are law	Post-ratification decisions/agreements are not binding as law

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
53	Auguste v. Ridge	395 F.3d 123	2005	U.S. Court of Appeals for the Third Circuit	Convention Against Torture	"United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering." (in reference to Article 1) and "United States understands the phrase 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in Article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'" (in reference to Article 3)	Senate and President agreeing during ratification stage of an interpretative understanding of torture is enough to give the understanding domestic legal effect
54	In re Agent Orange Prod. Liab. Litig.	373 F. Supp. 2d 7	2005	New York Eastern District Court	Genocide Convention	Understandings on Genocide Convention to include an intent element	Court understood that the use of herbicide was not genocide per the U.S. interpretative understanding at the time of ratification

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
55	In re Commissioner's Subpoenas	325 F.3d 1287	2003	Eleventh Circuit Court of Appeals	Treaty Between the United States and Canada on Mutual Legal Assistance in Criminal Matters	Article VII, P 2: "[a] request shall be executed in accordance with the law of the Requested State and, to the extent not prohibited by the law of the Requested State."	Treaty is ambiguous, so the court must turn to the history of the treaty, the negotiations, and the practical construction adopted by the parties; ultimately chooses one construction as the most plausible
56	Nat'l Westminster Bank, P.L.C. v. United States	58 Fed. Cl. 491	2003	Court of Claims	US-UK Income Treaty	Technical Explanation explaining how profits of a permanent establishment are to be established	Court would not read statement as suggesting that United States contemplated a certain argument being litigated and that the unilateral views of the U.S. are not controlling even if the courts read the statement broadly
57	AG of Can. v. R.J. Reynolds Tobacco Holdings, Inc.	268 F.3d 103	2001	Second Circuit Court of Appeals	Tax treaties	Understanding that states would only provide such collection assistance as would be necessary to ensure that the exemption or reduced rate of tax granted by the treaties would be enjoyed by persons not entitled to those benefits	Court does not consider validity of interpretative understandings but acknowledges them in analyzing treaty policy and practice

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
58	Elcock v. United States	80 F. Supp. 2d 70	2000	New York Eastern District Court	Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition	Article 8: "Extradition shall not be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the Requested State for the offense for which his extradition is requested."	Follows the *Sumitomo* reasoning to begin with the language of the treaty itself and identifies Senate pre-ratification debates and reports as a proper interpretive guide
59	Iwanowa v. Ford Motor Co.	67 F. Supp. 2d 424	1999	New Jersey District Court	Paris Reparations Treaty	Article 2A of the Paris Reparations Treaty: covers "all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature arising out of the war"	Meaning is clear where text is clear and parties to the treaty agree on the meaning

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60	United States v. Lui Kin-Hong	110 F.3d 103	1997	United States v. Lui Kin-Hong	Extradition Treaty Between the Government of the United States	Lui argued that the reversion of Hong Kong to the PRC would result in his being subjected to trial and punishment by a regime which the United States has no extradition treaty; will make his extradition illegal because extradition is only legitimate where trial and punishment will be administered by the regime with which the United States has a treaty	Court conducts a review of the plain text of the Treaty and Supplementary Treaty
61	Xerox Corp. v. United States	41 F.3d 647	1994	Federal Circuit Court of Appeals	U.S.-U.K. Income Tax Treaty	Question of whether Xerox Corporation is entitled to an indirect foreign tax credit for tax year 1974	Treaty is clear and can be harmonized with the law implementing the treaty; construes statute against how government would see it
62	United States v. Alvarez-Machain	504 U.S. 655	1992	U.S. Supreme Court	Extradition Treaty between the United States and Mexico	Article 9 of the Extradition Treaty between the United States and Mexico	There is no interpretative understanding or declaration but the Court reads the text as clear and one interpretation (the government's) as valid based on text and history

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63	Rainbow Navigation, Inc. v. Dep't of Navy	911 F.2d 797	1990	D.C. Circuit Court of Appeals	U.S.-Iceland Treaty on Allocation of Military Cargo Trade	Based upon statements made by officials of the Executive Branch during ratification proceedings in the Senate, district court had determined that "the treaty vested [certain] rights in the 'current carrier,' i.e., Rainbow."	Then-Judge Ruth Bader Ginsburg held that the executive statements are relevant guides but ambiguous ratification history can't obscure clear treaty language
64	United States v. Stuart	489 U.S. 353	1989	U.S. Supreme Court	1942 Convention Respecting Double Taxation	Articles XIX and XXI of the Convention between the United States and Canada Respecting Double Taxation, Mar. 4, 1942, oblige the United States, upon request and consistent with the United States revenue laws, to obtain and convey information to Canadian authorities to assist them in determining a Canadian taxpayer's income tax liability	Clear import of treaty language controls unless application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories
65	Absentee Shawnee Tribe of Indians v. Kansas	862 F.2d 1415	1988	Tenth Circuit Court of Appeals	1854 Treaty between Shawnees and United States	Indian land versus public land	Treaty is a contract between two sovereign nations and interpretation must go to intention of Indians and intention of government both; the terms of the Treaty, therefore, were understood by both parties to contemplate that the mission property

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							was "public land," and not land that was "reserved" to the Shawnees as Indian land in a technical sense
66	Xerox Corp. v. United States	14 Cl. Ct. 455	1988	Court of Claims	U.S.-U.K. Income Tax Treaty	Technical Explanation revealing intent of Treasury about the meaning of an advance corporation tax per Article 23 of the treaty	Court uses the technical explanation as a valid showing of the Senate and UK's interpretation of the Treaty
67	Coplin v. United States	6 Cl. Ct. 115	1984	U.S. Court of Claims	Article XV of the Implementation Agreement between the United States and Panama (executive agreement)	Article XV, Paragraph 1: The Commission shall be "exempt from payment in the Republic of Panama of all taxes."; Government argues that Article XV was meant to bar only Panama and not the United States from taxing Commission employees	Senate should have followed standard practice of adding an understanding so that both states could sign on; plain text is clear to the contrary of government's position
68	Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n	443 U.S. 658	1979	U.S. Supreme Court	Treaty of Medicine Creek	Treaty including an article on the right of taking fish	A treaty must be the intention of the two parties, and not solely that of a superior side; Court construes this treaty to mean that Indians secured the right to take share of each run of fish

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69	United States v. Kiowa, Comanche & Apache Tribes of Indians	202 Ct. Cl. 29	1973	Court of Claims	Treaty of 1865	Title to Royce Areas 510 and 511	Unambiguous words of a treaty are binding, and otherwise interpretation is per *Northwestern Bands of Shoshone Indians* rule
70	Northwestern Bands of Shoshone Indians v. United States	324 U.S. 335	1945	U.S. Supreme Court	Box Elder Treaty	Nothing in the treaty should be construed to admit "Any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof."	Court calls what appears to be an interpretative declaration an "amendment" at the time of ratification and includes it as dispositive for the meaning of the Box Elder Treaty

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71	General Electric Co. v. Robertson	25 F.2d 146	1928	Maryland District Court	Treaty of Berlin	Senate understanding: declares that the rights and advantages which the United States is entitled to have and enjoy under this treaty embrace the rights and advantages of nationals of the United States specified in the Joint Resolution or in the provisions of the Treaty of Versailles, to which this treaty refers	Recognizes the interpretation of the treaty as not a reservation but still ratified by both countries
72	Doe v. Braden	57 U.S. 635	1854	U.S. Supreme Court	Treaty to Cede Florida to the United States	Understanding that three grants of land in Florida to three individuals would be annulled at the time of treaty ratification ceding territory of Florida to the United States	Written declaration explaining ambiguous language in the instrument or adding new and distinct stipulation becomes part of the treaty and is binding

International Court Cases on Reservations and Interpretative Declarations

#	Case	Citation	Year	Court	Treaty	Treaty/Issue Background	Treatment of RUDs
73	The Effects of Reservations on the Entry into Force of the American Convention on Human Rights	Advisory Opinion OC-2/82, 1982 Inter-Am. Ct. H.R., Ser. A No. 2	Sept. 24, 1982	Inter-American Court of Human Rights	Inter-American Convention on Human Rights	Advisory opinion on reservations	Reservations are permissible as long as compatible with the object and purpose of Inter-American Convention on Human Rights
74	Benjamin and ors v. Trinidad and Tobago	2001 Inter-Am. Ct. H.R. (ser. C), No. 81	Sept. 1, 2001	Inter-American Court of Human Rights	Inter-American Convention on Human Rights	Trinidad and Tobago included a limitation in its declaration accepting the Court's contentious jurisdiction that precluded the Court from hearing the case; also if the limitation was to be declared invalid, the entire declaration would have been invalid	Reservation is incompatible with the Convention and therefore invalid; Court has authority to interpret its own jurisdiction to uphold efficacy of mechanisms established to preserve human rights

75	Netherlands v. Russian Federation	In the matter of the Arctic Sunrise Arbitration	Nov. 26, 2014	Annex VII Court	UNCLOS	Russian Federation had informed ITLOS and Netherlands: Upon the ratification of the Convention on the 26th February 1997 the Russian Federation made a statement, according to which, *inter alia*, 'it does not accept procedures provided for in Section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes . . . concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.'	The Tribunal considers that Russia's Declaration cannot create an exclusion that is wider in scope than what is permitted by article 298(1)(b)
76	Boyce v. Barbados	2007 Inter-Am. Ct. H.R. 1 (ser. C), No. 169	Nov. 20, 2007	Inter-American Court of Human Rights	Inter-American Convention on Human Rights	Barbados argued that its reservation to Article 4 of the ACHR precluded the Court's consideration of issues regarding the mandatory application of the death penalty and the method of execution used to impose the death sentence	A textual interpretation of Barbados' reservation showed that the state did not intend to exclude from the jurisdiction of the Court consideration on the mandatory nature of capital punishment

77	Loizidou v. Turkey	1995 Eur. Ct. H.R. 10 (Grand Chamber)	Mar. 23, 1995	European Court of Human Rights	European Convention on Human Rights	Turkey deposited an umber of declarations regarding acceptance of competence of European Commission of Human Rights	In the Court's view, the existence of such a restrictive clause governing reservations suggests that States could not qualify their acceptance of the optional clauses thereby effectively excluding areas of their law and practice within their "jurisdiction" from supervision by the Convention institutions
78	Mar. Delimitation in the Black Sea (Romania v. Ukraine)	2009 I.C.J. 62	Feb. 3, 2009	International Court of Justice	UNCLOS	Romania interpretative declaration that the uninhabited islands without economic life can in no way affect the delimitation of maritime spaces belonging to the mainland coasts of the coastal States	ICJ holds that the interpretative declaration cannot modify the legal effect of the treaty where reservations are prohibited by the treaty

79	Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Rwanda)	2006 I.C.J. 6	Feb. 3, 2006	International Court of Justice	Genocide Convention	Rwanda's reservation to Article IX of the Genocide Convention allowing ICJ jurisdiction	ICJ upholds Rwanda's reservation as being permissible unless incompatible with the object and purpose of the Convention; rejects DRC's contention that the reservation is in conflict with a preemptory norm of general international law; Judge Koroma dissented to argue that a reservation may still be against the raison d'être of a treaty and invalidated even if not incompatible with the object and purpose of the treaty
80	Fisheries Jurisdiction Case (Spain v. Canada)	1988 I.C.J. 432	Dec. 4, 1998	International Court of Justice	Iceland - United Kingdom Fishing Treaty	Canada informed the Court, by letter, that in its view the Court lacked jurisdiction to entertain the Application because the dispute was within the plain terms of the reservation in paragraph 2 (d) of the Canadian declaration of 10 May 1994	After interpreting the reservation, ICJ finds that the use of force authorized by the Canadian legislation and regulations falls within the ambit of what is commonly understood as enforcement of conservation and management measures and thus falls under the provisions of paragraph 2 (d) of Canada's declaration.

81	Case Concerning Border & Transporter Armed Actions	1988 I.C.J. 69	Dec. 20, 1988	International Court of Justice	Pact of Bogotá/Statute of the Court of International Justice	U.S. reservation to the Pact of Bogotá deferring to its reservation to Article XXXVI of the Statute of the Court of ICJ limiting jurisdiction	ICJ upholds U.S. reservation to the Pact
82	Belilos v. Switzerland	1998 Eur. Ct. H.R. 4	Apr. 29, 1998	European Court of Human Rights	European Convention on Human Rights	Switzerland's reservation to Article 6(1): "The Swiss Federal Council considers that the guarantee of fair trial in Article 6(1), in the determination of civil rights and obligations or any criminal charge against the person in question is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities relating to such rights or obligations or the determination of such a charge."	ECtHR held that reservation was indeed a reservation but was of a general character and therefore invalid; Switzerland agreed that it was still bound even if the reservation was invalid
83	Legality of the Use of Force (Yugoslavia v. United States)	1999 I.C.J. 916	June 2, 1999	International Court of Justice	Genocide Convention	United State's reservation to Article IX of the Genocide Convention allowing ICJ jurisdiction	ICJ upholds U.S. reservation; Judge Kreća dissents to argue that jus cogens norms can and must override an inconsistent reservation such as this one

84	Weber v. Switzerland	1990 Eur. Ct. H.R. 13	May 22, 1990	European Court of Human Rights	European Convention on Human Rights	Switzerland's reservation to Article 6(1) retaining the right to conduct proceedings in private in certain cases	ECtHR held that Switzerland had not complied with including a brief statement of the law and therefore the reservation was invalid
85	Ambatielos Case (Greece v. United Kingdom)	1952 I.C.J. 28	July 1, 1952	International Court of Justice	Anglo-Greek Agreements	Whether some words such as 'Save as provided in the Declaration annexed to this Treaty' have to be read into Article 32 before the words 'It shall come into force.'	ICJ includes interpretative declaration as part of the treaty