

RETHINKING HUMAN RIGHTS TREATY WITHDRAWALS: A PROCESS-BASED APPROACH

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This article presents the case for reconsidering the rules governing withdrawals from human rights treaties that permit unilateral exit. Once a rarity, such withdrawals have been on the rise across the globe. We propose a process-based approach to address this trend. The heart of our proposal focuses on sequenced domestic and international processes to publicise and scrutinise the nearly unfettered authority of executive branch officials to exit from such human rights treaties. This approach requires that national executives explain and justify a decision to withdraw, which can then be evaluated by a wide range of domestic and international actors. Drawing upon numerous real-world examples from international law, foreign relations law and comparative constitutional law, we explain how national legislatures, domestic and international courts, state parties, and treaty depositories can implement the process-based approach. Opening the black box of unfettered executive power in pursuit of reason-giving and dialogue is not only timely for human rights treaties but also has the potential to radiate across international law more generally.

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I INTRODUCTION

Treaties are the bedrock of the international protection of human rights. Multilateral agreements at the global, regional and subregional levels codify individual rights and freedoms and lead to the domestication of such protections in national constitutions and laws around the world. Human rights treaties also establish international monitoring and enforcement mechanisms, ranging from quasi-judicial supervisory bodies to regional courts that issue legally binding judgments, which provide avenues for individuals and communities to hold governments accountable for violations.

There is, however, an Achilles heel in this web of overlapping and mutually reinforcing international commitments: the ability of state parties to denounce human rights treaties or withdraw from the jurisdiction of international courts and monitoring bodies.¹ A few human rights treaties lack any provisions on exit and are understood as precluding denunciation or withdrawal.² However, the large majority of human rights conventions — 90% according to one authoritative estimate³ — contain clauses that expressly authorise a state party to give notice of its intention to withdraw. These include treaties that codify *jus cogens* norms — such as the prohibitions of genocide,⁴ torture,⁵ slavery,⁶ forced labour⁷ and

¹ We use the terms '[d]enunciation and withdrawal... interchangeably to refer to a unilateral act by which a nation that is currently a party to a treaty ends its membership in that treaty': Laurence R Helfer, 'Terminating Treaties' in Duncan B Hollis (ed), *The Oxford Guide to Treaties* (Oxford University Press, 2nd ed, 2020) 624, 625 (emphasis omitted).

² Four widely ratified UN human rights agreements — the *International Covenant on Civil and Political Rights* ('ICCPR'), the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the *Second Optional Protocol to the ICCPR, Aiming at the Abolition of the Death Penalty* — as well as the *African Charter on Human and Peoples' Rights*, all lack a withdrawal or denunciation clause: *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('ICESCR'); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW'); *African Charter on Human and Peoples' Rights*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) ('African Charter'). These treaties have been authoritatively interpreted as prohibiting states from leaving based in part on art 56 of the *Vienna Convention on the Law of Treaties*, which creates a presumption against unilateral exit from treaties lacking such clauses: *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 56 ('VCLT'). See generally Yogesh Tyagi, 'The Denunciation of Human Rights Treaties' (2009) 79(1) *British Year Book of International Law* 86.

³ An empirical survey estimates that 90% of human rights treaties include withdrawal clauses: Barbara Koremenos, *The Continent of International Law: Explaining Agreement Design* (Cambridge University Press, 2016) 143 ('*The Continent of International Law*').

⁴ *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art 14.

⁵ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 31(1).

⁶ *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, opened for signature 7 September 1956, 226 UNTS 3 (entered into force 30 April 1957) art 14.

⁷ *Convention Concerning Forced or Compulsory Labour*, opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932) art 30.

systematic racial discrimination⁸ — as well as the *Rome Statute of the International Criminal Court* ('*Rome Statute*') establishing the International Criminal Court ('ICC').⁹

Denunciations and withdrawals provide a mechanism to thwart international laws and institutions that seek to hold states and their officials accountable for violations, in particular the judicial and quasi-judicial bodies that adjudicate violations of human rights and international criminal law. The ability of these international institutions to expose and critique such violations has especially rankled states with authoritarian or populist governments. These governments have challenged these institutions in various ways, including systemic noncompliance, public criticism, withholding funds, and appointing pro-government judges and experts.¹⁰ But unilateral denunciations and withdrawals — as well as threats of exit — have become an increasingly common response in all three regional systems and from UN human rights treaties, as well as in the analogous area of international criminal law.¹¹

For example, Venezuela justified its 2013 denunciation of the *American Convention on Human Rights* on the grounds that the Inter-American Court of Human Rights ('IACtHR') had exceeded its jurisdiction and misapplied the Convention.¹² The Philippines withdrew in 2018 from the *Rome Statute* after the ICC Prosecutor opened a preliminary examination into crimes against humanity in that country.¹³ Nicaragua notified its withdrawal from the Organisation of

⁸ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) art 21; *International Convention on the Suppression and Punishment of the Crime of Apartheid*, opened for signature 30 November 1973, 1015 UNTS 243, art XVI.

⁹ The *Rome Statute of the International Criminal Court* applies to three crimes recognized as *jus cogens* — genocide, war crimes, and crimes against humanity: *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) art 127(1) ('*Rome Statute*').

¹⁰ See, eg, Courtney Hillebrecht, *Saving the International Justice Regime* (Cambridge University Press, 2021); Mikael Rask Madsen, 'Two-Level Politics and the Backlash against International Courts: Evidence from the Politicisation of the European Court of Human Rights' (2020) 22(4) *British Journal of Politics and International Relations* 728; Freek van der Vet and Lisa McIntosh Sundstrom, 'Activists in International Courts: Backlash, Funding, and Strategy in International Legal Mobilization' (2023) 57(1) *Law and Society Review* 6; Ségnonna Horace Adjolohoun, 'A Crisis of Design and Judicial Practice? Curbing State Disengagement from the African Court on Human and Peoples' Rights' (2020) 20(1) *African Human Rights Law Journal* 1; Øyvind Stiansen and Erik Voeten, 'Backlash and Judicial Restraint: Evidence from the European Court of Human Rights' (2020) 64(4) *International Studies Quarterly* 770.

¹¹ See, eg, Frederick Cowell, *The Law, Politics and Theory of Treaty Withdrawal* (Hart Publishing, 1st ed, 2023); Antonio Morelli, *Withdrawal from Multilateral Treaties* (Brill Nijhoff, 2021).

¹² *American Convention on Human Rights: 'Pact of San José, Costa Rica'*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978); Diego Germán Mejía-Lemos, 'Venezuela's Denunciation of the American Convention on Human Rights', *ASIL Insights* (Blog Post, 9 January 2013) <<https://www.asil.org/insights/volume/17/issue/1/venezuelas-denunciation-american-convention-human-rights>>, archived at <<https://perma.cc/9KK6-YPQ5>>.

¹³ In withdrawing from the court, then President Duterte 'also insulted the court and threatened to arrest Fatou Bensouda, a Gambian lawyer and the court's chief prosecutor, if she entered the Philippines': Jason Gutierrez, 'Philippines Officially Leaves the International Criminal Court', *New York Times* (online, 17 March 2019) <<https://www.nytimes.com/2019/03/17/world/asia/philippines-international-criminal-court.html>>, archived at <<https://perma.cc/TG5Z-LC82>>.

American States ('OAS') in 2021 in reaction to the organisation's repeated allegations of human rights violations.¹⁴ Belarus justified its 2022 denunciation of the *First Optional Protocol to the International Covenant on Civil and Political Rights* ('*First Optional Protocol to the ICCPR*') in response to the UN Human Rights Committee's allegedly 'arbitrary expansion' of its powers and interference in the state's internal affairs.¹⁵ More recently, in March 2025, Tunisia withdrew its declaration allowing individuals to have direct access to the African Court on Human and People's Rights.¹⁶

The international rules that apply to these and other withdrawals discussed in this article are based on a consent-based framework that is highly deferential to state sovereignty. This permissive approach is easy to apply: in most cases, the President or Prime Minister simply submits a brief letter informing the treaty depository that the state will no longer be a party as of a specified date. However, the consent-based approach also obscures significant normative and practical problems that arise at the intersection of international and domestic law.

Normatively, permissive withdrawal rules allow a state to exit regardless of whether its officials are systematically violating individual rights, openly flouting the authority of an international court or monitoring body, or denigrating the individuals whose rights the treaty protects. Most denunciation clauses also create uncertainty about whether the withdrawing state has continuing obligations to protect rights under the denounced treaty or other international instruments, customary law, *jus cogens* or national constitutions or statutes.¹⁷

Practically, permissive exit rules lack mechanisms for other state parties, international courts, monitoring bodies, or national legislative or judicial actors to express their views on the legality or prudence of a denunciation. For example, domestic restrictions on withdrawal — including constitutions that require parliamentary approval or judicial review of an executive's denunciation decision

¹⁴ Wilfredo Miranda Aburto, 'The Ortega Regime has Officially Withdrawn Nicaragua from the OAS', *El País* (online, 21 November 2023) <<https://english.elpais.com/international/2023-11-21/the-ortega-regime-has-officially-withdrawn-nicaragua-from-the-oas.html>>, archived at <<https://perma.cc/685Z-Y8SW>>.

¹⁵ Quoting the Deputy Foreign Minister for Belarus Igor Nazaruk: Viktoriya Kolchyna, 'Belarus to Leave UN Human Rights Body', *Institute for War and Peace Reporting* (online, 6 October 2022) <<https://iwpr.net/global-voices/belarus-leave-un-human-rights-body>>, archived at <<https://perma.cc/D6XW-D2FB>>.

¹⁶ Nicole De Silva and Mary Amadi, 'Renewed Backlash against the African Court: Tunisia is the Fifth State to Withdraw Individual and NGO Access', *EJIL Talk!* (Blog Post, 23 May 2025) <<https://www.ejiltalk.org/renewed-state-backlash-against-the-african-court-tunisia-is-the-fifth-state-to-withdraw-individual-and-ngo-access/>>, archived at <<https://perma.cc/U3XE-AXBF>>.

¹⁷ For an analysis of uncertainties over Belarus' continuing human rights obligations following its denunciation of the *First Optional Protocol to the ICCPR*: see, eg, Liudmila Ulyashyna, 'Withdrawal From a Human Rights Treaty and Peremptory Norms of International Law: The Case of "Belarus 2020"' (2024) 17(1) *Baltic Journal of Law and Politics* 70, 84. The ICC Appeals Chamber rejected, by a 3-2 vote, the Philippines' argument that the ICC has no jurisdiction following the state's 2019 withdrawal from the Rome Statute: ICC, *Situation in the Republic of the Philippines: ICC Appeals Chamber Confirms the Authorisation to Resume Investigations* (Press Release, 18 July 2023) <<https://www.icc-cpi.int/news/situation-republic-philippines-icc-appeals-chamber-confirms-authorisation-resume>>, archived at <<https://perma.cc/55G7-8GN6>>.

— have no bearing on the international validity of that decision.¹⁸ The timing of exit is also unaffected by domestic litigation challenging withdrawal. It is thus possible for the executive to denounce a human rights instrument in violation of the state's constitution, a statute or a judicial ruling and without regard to whether the treaty or its implementing legislation remains in force within the national legal order.¹⁹

To address these serious normative and practical concerns, we argue that the time is right to revisit the permissive, consent-based rules that govern unilateral withdrawals from human rights treaties that include exit clauses, as well as withdrawals of declarations accepting the jurisdiction of international courts and monitoring bodies.²⁰ In its place, we propose and defend a process-based approach that enhances the opportunities to scrutinise and challenge the executive's decision to withdraw.

Our approach builds upon nascent trends in international and national law, provides a principled defence of these trends, and proposes to extend these further through the interpretation of existing rules and the introduction of new procedures. Two court decisions in particular exemplify these developments. In 2020, the IACtHR issued an advisory opinion on the denunciation of the *American*

¹⁸ '[J]ust as a treaty entered into by an authorized executive official in violation of a constitution does not invalidate the state's consent to be bound, so too a notice of withdrawal by that same official will end the state's status as a treaty party, even if the withdrawal is contrary to the constitution': Laurence R Helfer, 'Treaty Exit and Intrabranh Conflict at the Interface of International and Domestic Law' in Curtis A Bradley (ed), *Oxford Handbook of Comparative Foreign Relations Law* (Oxford University Press, 2019) 354, 371–2 ('Treaty Exit and Intrabranh Conflict'). '[W]hile international law establishes that a violation of domestic law when a state joins a treaty may invalidate its treaty consent, it is silent on this question in relation to the state's treaty withdrawal': Hannah Woolaver, 'From Joining to Leaving: Domestic Law's Role in the International Legal Validity of Treaty Withdrawal' (2019) 30(1) *European Journal of International Law* 73, 74 ('From Joining to Leaving').

¹⁹ Domestic rights protection may persist after the denunciation of a human rights treaty takes effect, for example, in countries in Latin America in which human rights treaties including withdrawal clauses are part of a 'constitutional block' that national courts are authorized to enforce: Helfer, 'Treaty Exit and Intrabranh Conflict' (n 18) 363–4.

²⁰ Our analysis encompasses denunciations of human rights treaties that expressly authorise exit, as well as withdrawals from optional protocols and declarations by which a state accepts the jurisdiction of international courts and monitoring mechanisms. These actions are not identical, but they reflect similar underlying concerns — denying individuals access to international justice and undermining international human rights institutions. With regard to withdrawal of unilateral declarations accepting jurisdiction, international human rights courts have applied the principles in the *VCLT* by analogy, relying on *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Jurisdiction)* [1984] ICJ Rep 392, 418–20 [59]–[63]. However, the courts' conclusions diverge. The African Court on Human and Peoples' Rights has held that states can withdraw unilateral declarations with prospective effect by giving one year's notice, notwithstanding the absence of an express provision permitting such withdrawal: *Umuhoza v Rwanda* (Jurisdiction) (African Court on Human and Peoples' Rights, App No 003/2014, 3 June 2016) 15–6 [63]–[66]. In contrast, the IACtHR has held that a unilateral declaration cannot be revoked and that a state may only exit from the Court's contentious jurisdiction by denouncing the *American Convention on Human Rights* as a whole: *Ivcher-Bronstein v Peru (Judgment)* (Inter-American Court of Human Rights, Series C No 54, 24 September 1999) [46]–[53].

Convention on Human Rights and the *OAS Charter*.²¹ Colombia requested the opinion following Venezuela's exit from both instruments. The IACtHR concluded that OAS member states and regional institutions have a duty to challenge a country's decision to exit, notwithstanding the fact that the permissive withdrawal clauses in the *American Convention on Human Rights* and the *OAS Charter* do not expressly provide for such scrutiny. The Court reasoned that the treaties' overarching goal of protecting individuals, and the 'collective guarantee' that underpins it, requires other actors in the Inter-American system to take 'swift, collective action to address possible denunciations'.²² Such actions include reviewing 'the context and formal conditions in which the decision to denounce is taken at the domestic level and its correspondence with the established constitutional procedures',²³ and challenging denunciations that arise, inter alia, from 'disagreement with a decision made by a protection body and motivated by a manifest intention to breach international commitments adopted therein'.²⁴

The second decision, a 2017 ruling by the High Court of South Africa, upheld a constitutional challenge to the President's unilateral decision to withdraw from the ICC — a decision triggered by the fallout from Sudanese President Omar al-Bashir's visit to South Africa, when the executive declined to arrest him despite an obligation to do so under the *Rome Statute*.²⁵ The *Constitution* specifies how South Africa enters into treaties and incorporates them into domestic law, but it is silent on treaty exit.²⁶ The High Court reasoned that a notice of withdrawal is equivalent to a ratification, an act that requires prior parliamentary approval. Such approval 'creates a social contract between the people of South Africa, through their elected representatives in the legislature, and the national executive' and 'gives rise to the rights and obligations expressed in such international agreement'.²⁷ The High Court concluded that '[i]f it is parliament which determines whether an international agreement binds the country, it is constitutionally untenable that the national executive can unilaterally terminate such an agreement'.²⁸ The judgment thus ordered 'the executive to revoke the instrument of withdrawal', which it did in March 2017, 'and required any future

²¹ *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No 20 OC-26/20, 9 November 2020) ('*IACtHR Advisory Opinion on Denunciations*'). For additional analysis, see generally Silvia Steininger, 'Don't Leave Me This Way: Regulating Treaty Withdrawal in the Inter-American Human Rights System', *EJIL:Talk!* (Blog Post, 5 March 2021) <<https://www.ejiltalk.org/dont-leave-me-this-way-regulating-treaty-withdrawal-in-the-inter-american-human-rights-system/>>, archived at <<https://perma.cc/C5Q6-CS5T>>.

²² Inter-American Court of Human Rights, *IACtHR Advisory Opinion on Denunciations* (n 21) [170]–[171].

²³ *Ibid* [171].

²⁴ *Ibid* [113].

²⁵ *Democratic Alliance v Minister of International Relations and Cooperation* [2017] 3 SA 212 (High Court) ('*Democratic Alliance*').

²⁶ The *Constitution* provides that treaties signed by the executive do not bind South Africa under international law until 'after ... [they have] been approved by resolution in both the National Assembly and the National Council of Provinces': *Constitution of the Republic of South Africa Act 1996* (South Africa) ch 14 §231(2).

²⁷ *Democratic Alliance* (n 25) 24 [52].

²⁸ *Ibid* 24 [51].

withdrawal to be preceded by parliamentary approval and repeal of the domestic legislation implementing the *Rome Statute*'.²⁹

Our process-based approach builds on these cases and calls for expanding the opportunities for all affected actors to contest unilateral executive withdrawals at both the international and domestic levels. Consistent with the principle of subsidiarity and exhaustion of domestic remedies, we envision a sequencing of actions in which domestic challenges before legislatures, courts or national human rights institutions ('NHRIs') in the withdrawing country precede challenges by other state parties or individual litigants before international courts, monitoring bodies, conferences of the parties or treaty depositories. Where, however, domestic avenues are absent, unduly delayed or ignored by the executive, international challenges can proceed prior to or in parallel with challenges at the national level.

The process-based approach also encourages a pre-notification stage for contemplated treaty withdrawals during which legislatures, rights holders and civil society groups can assess the purported justifications for exit and seek to persuade the executive to reconsider its decision. Domestic actors can also file suit in national courts to challenge the legality of the withdrawal. However, executives sometimes announce denunciations without advance notice or consultation with other domestic actors.³⁰ In such cases, challenges to exit attempts must proceed during the notice period itself — as occurred in the South African litigation summarised above — with the aim of persuading or compelling the executive to abandon the withdrawal effort before the state ceases to be a treaty party. Even when these efforts fail, however, it remains possible for domestic or international actors to pressure the state after a withdrawal takes effect. As the IACtHR *Advisory Opinion* explains, this can occur by invoking human rights that continue to bind the exiting country under other treaties, customary international law and *jus cogens*, as well as diplomatic efforts to encourage that state to rejoin the treaty it has denounced.³¹

The remainder of this article proceeds as follows. Part II sets out the permissive rules and doctrines governing unilateral withdrawal from multilateral agreements and the rationales that support them. We then discuss recent and historical examples of human rights treaty exits to highlight the normative and practical shortcomings of these rules and doctrines applied to international human rights instruments. Part III sets forth our proposed process-based approach for evaluating such withdrawals. We first lay out how process-based review would function at domestic and international levels and then discuss the implications for future domestic and international lawmaking. Part IV identifies and responds to three objections to the process-based approach: that our proposal impractically blends

²⁹ Hannah Woolaver, 'Domestic and International Limitations on Treaty Withdrawal: Lessons from South Africa's Attempted Departure from the International Criminal Court' (2017) 111 *AJIL Unbound* 450, 451.

³⁰ Noting the 'precipitous and unexpected unilateral presidential decision [to withdraw] at the start of a weekend': Başak Çalı and Laurence Helfer, 'The Gender of Treaty Withdrawal: Lessons from the *Istanbul Convention*', *EJIL:Talk!* (Blog Post, 28 November 2022) <<https://www.ejiltalk.org/the-gender-of-treaty-withdrawal-lessons-from-the-istanbul-convention/>>, archived at <<https://perma.cc/2BBS-27NH>>.

³¹ Inter-American Court of Human Rights, *IACtHR Advisory Opinion on Denunciations* (n 21) [173].

domestic and international law; reduces incentives for states to join new multilateral agreements and forces insincere ratifiers to remain as parties to human rights treaties; and does little to constrain exit by authoritarian and populist governments. Part V concludes by summarising our arguments and considering possible extensions to other areas of international law.

II THE PERMISSIVE APPROACH TO UNILATERAL WITHDRAWALS

A *The Advantages and Risks of Including an Exit Option in Treaties*

Treaties are creatures of state consent.³² Each country decides for itself whether to join an international agreement. In making this determination, states generally weigh the political, economic, reputational, and other costs and benefits of joining a treaty against the costs and benefits of remaining a non-party.³³ Seen from this perspective, creating the possibility for states to exit at some point in the future acts as a kind of insurance policy. Since uncertainty is pervasive in international affairs, such an exit option can enhance treaty-based cooperation by facilitating the negotiation of deeper and broader international commitments than might otherwise be possible without that option or by inducing a larger number of countries to join the treaty.

Once a treaty enters into force, however, the possibility that states may unilaterally withdraw at any time may hinder international cooperation. One concern is that states will overuse denunciation clauses, invoking them whenever domestic pressure makes disengaging from a treaty politically expedient.³⁴ A second concern is that states will exit opportunistically, withdrawing after having captured the benefits of treaty membership.³⁵ Aware of these risks, other state parties will have less incentive to invest in treaty implementation and compliance.

These competing incentives suggest that an important issue facing treaty negotiators is to provide appropriate conditions on exit. Conditions that are too easy to satisfy may encourage self-serving withdrawals and lead to a breakdown in interstate cooperation. Conditions that are too restrictive will discourage such behaviour but may impede the negotiation of an international agreement in the first instance or reduce the number of states willing to ratify the treaty.

All multilateral agreements use various methods to reduce the risks of opportunistic exit while encouraging negotiation and ratification. The most common of these is a notice period during which the withdrawing state continues as a party to the treaty.³⁶ Other conditions include a ban on denunciations for

³² The analysis in Part II(A) is developed in greater detail with numerous examples in Laurence R Helfer, 'Treaty Withdrawals in a Turbulent World: A Retrospective on Exiting Treaties' in Donna Lyons (ed) *Leading Works in International Law* (Routledge, 2024) 67; Laurence R Helfer, 'Taking Stock of Three Generations of Research on Treaty Exit' (2019) 52(1) *Israel Law Review* 103; Laurence R Helfer, 'Exiting Treaties' (2005) 91 *Virginia Law Review* 1579. Other insightful analyses include: Cowell (n 11); Tim Meyer, 'Power, Exit Costs, and Renegotiation in International Law' (2010) 51(2) *Harvard International Law Journal* 379; Morelli (n 11).

³³ See, eg, Koremenos 'The Continent of International Law' (n 3) 381.

³⁴ Helfer 'Exiting Treaties' (n 32) 1582–3.

³⁵ *Ibid* 1600.

³⁶ *Ibid* 1597–8.

several years after a treaty first enters into force,³⁷ a requirement to provide an explanation for the withdrawal,³⁸ or a clause clarifying that the exiting state remains responsible for violations committed during the notice period and for remedying those violations after the notice period has expired.³⁹ Finally, some treaties do not contain withdrawal or denunciation clauses.⁴⁰ For such agreements, art 56(1) of the *Vienna Convention on the Law of Treaties* ('VCLT') establishes a presumption against unilateral exit unless '[i]t [can be] ... established that the parties intended to admit the possibility of ... withdrawal' or '[a] right of ... withdrawal may be implied by the nature of the treaty'.⁴¹ These conditions are consistent with the consent principle because states expressly agree, when ratifying a treaty, to limit their freedom of action concerning any subsequent unilateral withdrawals.

The conditions for treaties that expressly permit unilateral exit are, however, minimalist and procedural in nature. For example, the requirement of prior notification provides a cooling off period that may encourage governments to think twice before going through the formal process of withdrawal and during which other treaty parties may seek to address the exiting state's concerns.⁴² But if the state decides to leave nonetheless, international law's permissive approach to treaty withdrawal imposes no additional restrictions on its ability to do so. All that matters is that an executive branch official with full powers to represent the state submits a pro forma notice of denunciation to the treaty depository.⁴³ Once the depository records the notice, calculates the effective date of the withdrawal, and circulates the notice to other state parties, international law's scrutiny of the validity of the act is essentially complete.⁴⁴

B The Costs of the Permissive Approach for Withdrawals from Human Rights Instruments

The minimalist constraints on withdrawal set forth in most treaties are appropriate for agreements that primarily create reciprocal rights and obligations

³⁷ See, eg, *Paris Agreement*, opened for signature 12 December 2015, 3156 UNTS 79 (entered into force 4 November 2016) art 28.

³⁸ See, eg, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, opened for signature 13 January 1993, 1974 UNTS 45 (entered into force 29 April 1997) art XVI.

³⁹ '[A] denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this *Convention* with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation': *American Convention on Human Rights* (n 12) art 78(2).

⁴⁰ For a discussion of human rights treaties without denunciation clauses: see Tyagi (n 2) 116–24.

⁴¹ VCLT (n 2) art 56. For a discussion: see Vassilis Pergantis, *The Paradigm of State Consent in the Law of Treaties* (Edward Elgar Publishing, 2017) 161–63.

⁴² Helfer, 'Exiting Treaties' (n 32) 1648.

⁴³ Woolaver, 'From Joining to Leaving' (n 18) 89–90.

⁴⁴ 'The withdrawal of a State from a multilateral treaty puts an end to that State's status as a party [and] terminates its treaty relationships with each of the other parties': Thomas Giegerich, 'Termination or Withdrawal from a Treaty Under its Provisions or by Consent of the Parties' in Oliver Dörr and Kirsten Schmalenbach (eds) *Vienna Convention on the Law of Treaties: A Commentary* (Springer, 2021) 945, 985. See also Morelli (n 11) 51: 'Withdrawal represents a unilateral decision that need not be shared or accepted unanimously, and it automatically triggers a permanent consequence — termination of the withdrawing state's relationship with the treaty'.

for state parties. When international law commitments are strictly intergovernmental in nature, it makes sense to respect the bargain that state parties have agreed to, including the minimal conditions on unilateral exit.

Such a permissive approach is, however, at odds with treaties that do not regulate strictly intergovernmental matters. Global, regional and sub-regional human rights instruments are the archetype of such treaties. As multiple international tribunals have explained, human rights treaties are

not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings...⁴⁵

When a state unilaterally exits from a human rights treaty or a declaration conferring jurisdiction on a human rights court or review body, it is thus not merely ending its obligations vis-à-vis the remaining treaty parties. It is also renouncing international legal rights held by individuals or groups.

In what follows, we focus on the important problems that arise under domestic and international law when states withdraw from human rights treaties that impose only minimal constraints on exit. As we explain in the conclusion, our findings also have implications for other treaties that create rights and obligations for individuals and non-state actors, such as international humanitarian law and multilateral instruments that create public goods.

1 *Adverse Consequences for Domestic Law*

In addition to codifying international commitments for state parties, human rights treaties also envisage implementation through embeddedness in national legal systems.⁴⁶ Embeddedness can occur in several ways: giving human rights treaties constitutional status; the adoption of legislation that incorporates the treaties or codifies the rights they contain; decisions of apex national courts that interpret constitutional and statutory rights in harmony with the state's international obligations; and domestic measures adopted to comply with the decisions of human rights courts, commissions and quasi-judicial bodies.⁴⁷

The domestic embeddedness of international human rights instruments gives rise to three sets of problems when an executive branch official seeks to withdraw

⁴⁵ *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No 2, 24 September 1982) [29].

⁴⁶ Laurence R Helfer, 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime' (2008) 19(1) *European Journal of International Law* 125, 128 ('Embeddedness').

⁴⁷ See, eg, Hellen Keller and Alec Stone Sweet, *A Europe of Rights: Impact of the ECHR on National Legal Systems* (Oxford University Press, 2008); European Commission for Democracy Through Law, *Report on the Implementation of International Human Right Treaties in Domestic Law and the Role of Courts* (Study No 690/2012 CDL-AD(2014)036, 8 December 2014) <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)036-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)036-e)>, archived at <<https://perma.cc/QN9K-S2D9>>; Raffaella Kunz, 'Judging International Judgments Anew? The Human Rights Courts before Domestic Courts' (2019) 30(4) *European Journal of International Law* 1129; Zachary Elkins, Tom Ginsburg and Beth A Simmons, 'Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice' (2013) 54(1) *Harvard International Law Journal* 61.

pursuant to the permissive approach described above. The first difficulty is the executive's ability to modify the protection of individual rights in domestic law without involving the national legislature. As empirical studies of exit have shown, 'treaty withdrawal[s] can have momentous implications, including extensive changes in domestic law[s]' that protect human rights.⁴⁸ Yet, existing international law recognises the authority of an executive official with full powers to denounce a human rights instrument without regard to whether the Parliament (or other domestic actors) have approved that decision. Permissive withdrawal rules thus legitimate the executive's action on the international plane even when the domestic legality of such an action is in doubt.⁴⁹

Secondly, unilateral executive withdrawal also increases domestic legal uncertainty. This uncertainty often relates to longstanding debates about whether a denunciation complies with constitutional or statutory rules regulating treaty exit. It also implicates whether and how a withdrawal affects the interpretation of individual rights in national constitutions and legislation once a treaty protecting those rights is no longer in force for the state.⁵⁰

Thirdly, when a unilateral executive denunciation is challenged in a domestic court — whether by legislators, individuals or civil society groups — the permissive approach requires treaty depositories to give effect to the withdrawal notwithstanding the pending litigation.⁵¹ Moreover, because litigation is often time consuming and involves one or more levels of appeal, a final judicial decision may be issued long after the state's treaty membership has ceased. This creates the possibility that a domestic court will decide that a treaty that is no longer in force for the state on the international level nevertheless remains binding in national law because the executive disregarded constitutional or statutory procedures.⁵² Domestic courts may thus be placed in the politically and legally awkward position

⁴⁸ Pierre-Hugues Verdier and Mila Versteeg, 'Separation of Powers, Treaty-Making, and Treaty Withdrawal: A Global Survey' in Curtis A Bradley (ed) *Oxford Handbook of Comparative Foreign Relations Law* (Oxford University Press, 2019) 135, 138. See also European Commission for Democracy Through Law, *Report on the Domestic Procedures of Ratification and Denunciation of International Treaties* (Opinion No 1045/2021 CDL-AD(2022)001, 25 March 2022) [8] ('*Venice Commission Ratification and Denunciation Report*') <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)001-e)>, archived at <<https://perma.cc/XAW6-8TRA>>. 'For human rights treaties, [a] denunciation typically results in the decrease of substantive guarantees of protection of individuals and/or in the removal of some institutional or procedural mechanisms that monitor and enforce the implementation of and respect for such guarantees': *Venice Commission Ratification and Denunciation Report* [288].

⁴⁹ Regarding the distinction between international and domestic legality of unilateral treaty withdrawals by the executive, and proposing that international law should impose equivalent limits on the executive's ability to join and leave treaties: see Woolaver, 'From Joining to Leaving' (n 18) 98–101.

⁵⁰ Domestic protection of internationally guaranteed rights persist after a human rights treaty denunciation takes effect: see Helfer, *Treaty Exit and Intrabranh Conflict* (n 18) 363–4.

⁵¹ See Helfer, 'Treaty Exit and Intrabranh Conflict' (n 18) 372. See generally Woolaver, 'From Joining to Leaving' (n 18) 74.

⁵² For analysis of situations wherein 'withdrawal expressly permitted by a treaty and carried out by a state's authorized representative can be fully effective on the international level but have no effect in the domestic legal order': Helfer, 'Treaty Exit and Intrabranh Conflict' (n 18) 364.

of declaring a notice of denunciation to be void or even ordering the executive to retroactively restore the state's status as a treaty party.⁵³

The decoupling of international and domestic legality that underpins the three problems just described not only diminishes the practical ability of the judicial and legislative branches to constrain the executive, it also undermines the entrenched status of international human rights instruments in national law.⁵⁴ In a growing number of jurisdictions, legislators have responded to these concerns by modifying the domestic rules governing treaty withdrawals. In some countries, the President or Prime Minister must receive the prior approval of Parliament or formally notify legislators before filing a notice of denunciation.⁵⁵ In other states, the executive consults with Parliament or other domestic actors even if doing so is not legally required.⁵⁶ The increasing prevalence of these approval, notice and consultation requirements reflects a growing awareness of the shortcomings of the permissive approach and the wide discretion it gives the executive to quit human rights treaties.

2 Adverse Consequences for International Law

The permissive approach to unilateral withdrawals also raises problems under international law. These problems relate to the nested structure of the international human rights system, in which multilateral treaties overlap with and are linked to other conventions (a few of which do not permit withdrawals) as well as to customary law and *jus cogens*.⁵⁷ We explore the different dimensions of this phenomenon before assessing their implications for unilateral withdrawal.

Nesting first arose when general human rights agreements adopted in the first two decades following World War II — such as the *ICCPR* and *International Covenant on Economic, Social and Cultural Rights* ('*ICESCR*') as well as the

⁵³ To our knowledge, this possibility has never occurred. However, a recent study notes 'the significant intrusion in foreign affairs that would result' from the converse situation that has occurred — in which a national court finds a treaty to be unconstitutional after ratification. This would 'potentially plac[e] the executive (and legislature) in the position of having to denounce or withdraw from a treaty, possibly in violation of the treaty's own provisions or other international law rules governing treaty termination': Verdier and Versteeg (n 48) 154–5.

⁵⁴ On the constitutionalist functions of human rights treaties: see Stephen Gardbaum, 'Human Rights and International Constitutionalism' in Jeffrey L Dunoff and Joel P Trachtman (eds) *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge University Press, 2009) 233.

⁵⁵ An empirical survey reveals that in most states 'the executive retains the authority to withdraw from treaties without parliamentary approval', but that 'several countries already mandate parliamentary involvement in treaty withdrawal, and their numbers have been growing substantially in the past four decades': Verdier and Versteeg (n 48) 148–9. In the (then) 47 member states of the Council of Europe, at least 29 countries require parliamentary approval for both the ratification and denunciation of treaties: *Venice Commission Ratification and Denunciation Report* (n 48) 5–6 [8].

⁵⁶ In Norway, denunciation does not require parliamentary approval, but 'by convention' the government consults Parliament in cases involving 'the denunciation of an important treaty, or if denunciation may have political consequences': *Venice Commission Ratification and Denunciation Report* (n 48) [73].

⁵⁷ For an early discussion of nested regimes in international relations: see Robert O Keohane, 'The Demand for International Regimes' (1982) 36(2) *International Organization* 325, 334. For an application to human rights treaties and international institutions: see Jack Donnelly, 'International Human Rights: A Regime Analysis' (1986) 40(3) *International Organization* 599.

European Convention on Human Rights — were supplemented by newer instruments.⁵⁸ These treaties focus on particular groups (such as racial minorities, children and persons with disabilities) or deepen and extend protections of existing rights (including the prohibition of torture, capital punishment, violence against women and enforced disappearances).⁵⁹ A few treaties recognise new rights that build on existing standards (such as the *Convention on the Rights of Persons with Disabilities*).⁶⁰

The elaboration and expansion of human rights via treaty-making has been reinforced by international courts and monitoring mechanisms, which assess compliance by state parties, provide interpretive guidance and adjudicate complaints alleging violations. The normative output of these judicial and quasi-judicial bodies deepened the connections among international instruments by harmonising interpretations of rights across different treaties and domestic laws. For example, the ‘best interests of the child’ principle — codified in the *Convention on the Rights of the Child* —⁶¹ is built on similar principles in other international and domestic instruments and is now recognised as a global standard for interpreting rights protections for children.⁶²

Another dimension of nesting relates to the fact that many human rights enshrined in treaties are also protected by customary international law and, for a more limited set of rights, by *jus cogens*.⁶³ For example, torture by a public official or anyone acting under the authority or with acquiescence of the government is prohibited in multiple global and regional human rights conventions.⁶⁴ Torture is also proscribed in nearly all national constitutions and criminal laws.⁶⁵ The overlapping and mutually reinforcing nature of this ban supports the widely held conclusion that torture contravenes customary international law. In addition, the fact that no state claims the authority to torture — even during emergencies or other exigent circumstances — explains why the ban is also a non-derogable peremptory norm, even though unauthorised acts of torture continue to occur with

⁵⁸ See generally Thomas Buergenthal, ‘The Evolving International Human Rights System’ (2006) 100(4) *American Journal of International Law* 783.

⁵⁹ See, eg Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016).

⁶⁰ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008). See, eg, Paul Harpur, ‘Embracing the New Disability Rights Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities’ (2012) 27(1) *Disability and Society* 1, 2–3.

⁶¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁶² See Jason M Pobjoy, ‘The Bests Interests of the Child Principle as an Independent Source of International Protection’ (2015) 64(2) *International and Comparative Law Quarterly* 327; Milka Sormunen, ‘Understanding the Best Interests of the Child as a Procedural Obligation: The Example of the European Court of Human Rights’ (2020) 20(4) *Human Rights Law Review* 745.

⁶³ Dire Tladi, Special Rapporteur, *Fourth Report on Peremptory Norms of General International Law (Jus Cogens)*, 71st sess, UN Doc A/CN.4/727 (31 January 2019) (‘*Fourth Report on Peremptory Norms*’).

⁶⁴ See generally Lutz Oette, *The Transformation of the Prohibition of Torture in International Law* (Oxford University Press, 2024)

⁶⁵ Noting that the prohibition had ‘been introduced into the domestic law of almost all States’: see *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* [2012] ICJ Rep 422, 457 [99].

unfortunate regularity.⁶⁶ A similar analysis applies to several other nested human rights, including the prohibitions of slavery, genocide, racial discrimination and apartheid.⁶⁷

The permissive approach to unilateral denunciations is silent on the nested structure of international human rights law and the potential negative impact that exit can have for rights protected under multiple treaties, custom or *jus cogens*. This claim may at first seem surprising, in that the ratification or denunciation of one treaty is a discrete legal act that has no formal relationship to other international agreements. To take a recent example, Türkiye's exit in 2021 from the Council of Europe's *Convention on Preventing and Combating Violence Against Women and Domestic Violence* ('*Istanbul Convention*') does not affect its obligations under the *Convention on the Elimination of All Forms of Discrimination against Women* ('*CEDAW*') to prevent and punish violence against women.⁶⁸ Yet as we now explain, this formalist perspective disregards the close practical linkages among many human rights instruments and norms, as a result of which withdrawal by one state can subvert the international human rights system writ large.

3 *How Unilateral Exit Undermines the International Human Rights System: Four Examples*

This section discusses four types of unilateral exit permitted under the permissive approach that risk destabilising the international human rights system: withdrawals that challenge the authority of international human rights courts or review bodies; withdrawals in the face of flagrant and ongoing violations; withdrawals that aim to undermine human rights protections in general or the rights of particular minority groups; and withdrawals from treaties that codify *jus cogens* norms.

First, several countries have coupled their notice of denunciation with public statements that challenge the authority of international courts or monitoring mechanisms. For example, when withdrawing declarations giving individuals and non-governmental organisations direct access to the African Court on Human and Peoples' Rights in 2020, Benin and Côte d'Ivoire criticised the Court for 'excessive interference in matters that go beyond its competence', encroaching on their sovereignty, and engaging in "intolerable actions".⁶⁹ The withdrawals followed judgments in favour of opposition political party officials who sought to

⁶⁶ See, eg, Erika de Wet, 'The Prohibition of Torture as an International Norm of *Jus Cogens* and Its Implications for National and Customary Law' (2004) 15(1) *European Journal of International Law* 97.

⁶⁷ *Fourth Report on Peremptory Norms* (n 63). For an analysis and critical reflection: see Andrea Bianchi, 'Human Rights and the Magic of *Jus Cogens*' (2008) 19(3) *European Journal of International Law* 491.

⁶⁸ Council of Europe, *Convention on Preventing and Combating Violence against Women and Domestic Violence*, opened for signature 11 May 2011, CETS No 210 (entered into force 1 August 2014).

⁶⁹ Martin Faix and Ayyoub Jamali, 'Is the African Court on Human and Peoples' Rights in an Existential Crisis?' (2022) 40(1) *Netherlands Quarterly Human Rights* 56, 67–9.

participate in elections — judgments that both countries openly flouted.⁷⁰ Nicaragua notified its withdrawal from the OAS in 2021 following national elections that the regional body declared illegitimate due to widespread violence and arrests of opposition politicians. In 2022, a few months into the two-year notice period, the police raided the OAS office in the Nicaraguan capital and the foreign minister lambasted the regional organisation as a ‘diabolic instrument’.⁷¹

A second example involves a state that withdraws while continuously and systematically violating the rights that the treaty protects.⁷² The denunciation by Belarus of the *First Optional Protocol to the ICCPR* is a prominent recent example. Belarus has been the subject of more than 150 individual communications to the UN Human Rights Committee, most involving challenges to prosecutions of ‘human rights defenders, journalists, lawyers, opposition politicians ... and peaceful protesters’ resulting in serious criminal penalties — including capital punishment, which was expanded in 2022.⁷³ Although the Committee has issued dozens of decisions against Belarus, the state has consistently ignored the treaty body’s findings and recommendations.⁷⁴ Belarus denounced the *First Optional Protocol to the ICCPR* in 2022 after the government criticised the Committee’s monitoring functions as an ‘unauthorized expansion of its powers’ and an ‘interference in the [State’s] internal affairs’.⁷⁵ The Chair of the Committee issued a public statement lamenting Belarus’s action as ‘a serious and unfortunate setback for human rights protection’.⁷⁶

⁷⁰ Ibid 68–9. Rwanda provided a similar justification in 2016 for withdrawing the declaration it filed several years earlier: see Oliver Windridge, ‘Assessing Rwexit: The Impact and Implications of Rwanda’s Withdrawal of Its Article 34(6) Declaration before the African Court on Human and People’s Rights’ (2018) 2 *African Human Rights Year Book* 243, 249–50.

⁷¹ Alina Maria Ripplinger and Florian Kriener, ‘Nicaragua’s OAS Raid and the Inter-American System’, *Verfassungsblog* (Blog Post, 2 May 2022) <<https://verfassungsblog.de/nicaraguas-oas-raid-and-the-inter-american-system>>, archived at <<https://perma.cc/WJ9J-HLMS>>.

⁷² As previously explained, a state remains responsible under international law for remedying violations that occur prior to the effective date of a denunciation. This is so even if an international court or monitoring body adjudicates such violations after that date. The point here is different in that exit is lawful under *lex generalis* notwithstanding ongoing and pervasive violations of the treaty from which the state withdraws: see above Part II(B)(1).

⁷³ ‘Belarus: Zone of Repression – Brutal Crackdown on Dissent and Anti-War Movement; Death Penalty Expansion’, *Human Rights Watch* (online, 12 January 2023) <<https://www.hrw.org/news/2023/01/12/belarus-zone-repression>>, archived at <<https://perma.cc/X8HT-D38J>>.

⁷⁴ PEN Belarus, ‘HRDs Condemn Denunciation by Belarus of the Optional Protocol to the ICCPR’ (Press Statement, 22 August 2022) <<https://penbelarus.org/en/2022/08/22/asudzhaem-namery-uladau-denansavacz-fakultatyuny-pratakola-da-mizhnarodnaga-pakta-ab-gramadzyanskih-i-palitychnyh-pravah.html>>, archived at <<https://perma.cc/D62R-VNGS>>.

⁷⁵ ‘Deputy Foreign Minister of Belarus accuses the UN Human Rights Committee of “Interfering in Internal Affairs”’ *Зеркало* [Mirror] (19 October 2022) <https://news-zerkalo-io.translate.google/economics/24342.html?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en> [tr Google], archived at <<https://perma.cc/G44V-TTB9>>.

⁷⁶ The Human Rights Committee continues to process cases against Belarus that were registered prior to the effective date of the denunciation: United Nations, ‘Belarus’ Withdrawal from Individual Complaints Procedure a Serious Setback for Human Rights Protection, UN Human Rights Committee Says’ (Press Release, 25 November 2022) <<https://www.ohchr.org/en/press-releases/2022/11/belarus-withdrawal-individual-complaints-procedure-serious-setback-human>>, archived at <<https://perma.cc/D9YC-XR3P>>.

Third, withdrawal can be part of a broader campaign to undermine human rights in general or the rights of particular disadvantaged groups. Nicaragua's near total disengagement from regional and global monitoring bodies is illustrative. After filing a notice of withdrawal from the OAS in 2021, Nicaragua refused to participate in reviews by six treaty bodies that monitor UN human rights conventions that the state had ratified, thereby embracing 'isolation and confrontation as its new foreign policy'.⁷⁷ In effect, the government sought to avoid the multiple venues for external scrutiny that nested human rights treaties make possible. Türkiye's exit from the *Istanbul Convention* in 2021 reveals a similar, if more narrowly focused, intent. President Erdoğan justified the withdrawal on the ground that a treaty 'originally intended to promote women's rights, was hijacked by a group of people attempting to normalize homosexuality — which is incompatible with Türkiye's social and family values'.⁷⁸ The CEDAW Committee, criticising the withdrawal as 'a deliberately retrogressive measure' that reflected Türkiye's 'disengaging from its international commitments', concluded that the denunciation 'cannot, and does not, have a valid ground and justification' and urged the state 'to reconsider [its action] as a matter of highest priority, and by all possible means'.⁷⁹

A fourth problematic category involves exit from human rights treaties that codify peremptory norms. This is not because the denunciation itself violates *jus cogens*. Rather, the concern is that such a denunciation, even if authorised under a treaty clause codifying the permissive approach described above, may degrade a human rights norm from which no derogation is permitted. The CEDAW Committee underscored this concern in its criticism of Türkiye's denunciation of the *Istanbul Convention*, noting that the withdrawal 'undermines the recognition of peremptory norms of international law (*jus cogens*)', which it listed as including

⁷⁷ Noting that 'Nicaragua has refused to undergo reviews by six UN committees on torture, women's rights, racial discrimination, civil and political, and economic, social and cultural rights': 'International Service for Human Rights, UN Anti-Torture Bodies Condemn Nicaragua, After It Dodges Six UN Reviews' (Media Release, International Service for Human Rights, 29 November 2022) <<https://ishr.ch/latest-updates/treaty-bodies-nicaragua-defies-human-rights-bodies-escapes-scrutiny/>>, archived at <<https://perma.cc/C37M-R5RR>>.

⁷⁸ Presidency of the Republic of Türkiye Directorate of Communications, 'Statement Regarding Türkiye's Withdrawal from the Istanbul Convention' (Press Statement, 22 March 2021) <<https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention>>, archived at <<https://perma.cc/8VHL-Z9SR>>.

⁷⁹ Committee on the Elimination of Discrimination Against Women, 'Turkey's Withdrawal from the Istanbul Convention: A Retrogressive Step Back in the Protection of Women's Human Rights Enshrined in the CEDAW Convention' (Press Statement, 1 July 2021) <<https://www.ohchr.org/en/press-releases/2021/07/un-womens-rights-committee-urges-turkey-reconsider-withdrawal-istanbul>>, archived at <<https://perma.cc/G26J-FMEV>> ('CEDAW Committee Statement'). Türkiye's decision 'highlighted how the use of an individual sovereign prerogative of withdrawal, and the stated reasons accompanying it, could create wider uncertainty about the protection of human rights more generally': Cowell (n 11) 174.

‘the prohibition of torture, femicide and ... guarantees of substantive equality and non-discrimination’.⁸⁰

III A PROCESS-BASED APPROACH TO EVALUATING UNILATERAL WITHDRAWALS FROM INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

We have thus far described the normative and practical problems in domestic and international law of the permissive approach to unilateral denunciations of human rights instruments by executive branch officials. This Part sets forth our proposal to remedy these problems by adopting a process-based approach. In brief, a process-based approach seeks to expand opportunities for all actors who may be affected by a denunciation to utilise opportunities in domestic and international law to review and challenge the nearly unfettered authority of the executive to exit from human rights instruments.

In the first section, we show that international law is no stranger to process-based approaches, and that ratification and reservations — key actions at the beginning of treaty relationships — have been infused by such approaches through norm development and state practice. The second section sets forth our proposal for a process-based approach to evaluating the end of treaty relationships and the multiple ways to implement the proposal in international and domestic law.

A *Process-Based Approaches in Treaty Law: Ratifications and Reservations*

Process-based approaches emphasise the importance of giving reasons for decisions to inform individuals and groups affected by the decisions and, in turn, enable those actors to scrutinise those decisions. These approaches have an extensive pedigree in domestic administrative laws that regulate the exercise of discretionary power by public authorities.⁸¹ This tradition emphasises the importance of process as an enabler of ‘good substance’⁸² and as promoting other values, such as transparency, the quality and integrity of reasons, and the participation of affected actors in decision-making. Scholars of global administrative law have documented the diffusion of these processes and values across a range of international regimes, as well as the involvement of domestic administrative institutions in addressing global regulatory challenges.⁸³

⁸⁰ CEDAW Committee Statement (n 79). A similar focus on cabining the effects of unilateral treaty actions on *jus cogens* is reflected in the ILC’s Draft Conclusions on Peremptory Norms of General International Law. Conclusion 13 addresses the legal effect of a reservation to a treaty provision that ‘reflects a peremptory norm of general international law (*jus cogens*)’. According to the ILC, such a reservation ‘does not affect the binding nature of that norm’ nor can it ‘exclude or modify the legal effect of a treaty in a manner contrary to’ *jus cogens*: International Law Commission, *Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)*, UN GAOR, 73rd sess, UN Doc A/CN.4/L.967 (11 May 2022) conclusion 13. We note that the CEDAW Committee’s identification of *jus cogens* is considerably broader than the peremptory human rights norms recognized by the ILC: at conclusion 23 and annex.

⁸¹ See Timothy Endicott, *Administrative Law* (Oxford University Press, 2nd ed, 2011).

⁸² Ibid 213.

⁸³ Benedict Kingsbury, Nico Krisch and Richard B Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68(3–4) *Law and Contemporary Problems* 15, 37–42; Benedict Kingsbury and Megan Donaldson, ‘Global Administrative Law’ in Rüdiger Wolfrum and Anne Peters (eds), *Max Planck Encyclopaedia of Public International Law* (Oxford University Press, online at April 2011) [24].

Process-based approaches are equally relevant to the law of treaties, where states retain broad discretion regarding negotiation, ratification, reservations and withdrawals, and where international and domestic law often operate in tandem. First, consider how states become treaty parties. Ratification is the formal act that takes place after signature by a state's representative that evidences the state's consent to be bound.⁸⁴ Under international law, ratification normally occurs only after a domestic process takes place, usually a Parliament reviewing and approving the executive's decision to join the treaty.⁸⁵ The ILC has explained why many treaties are made subject to such a domestic process:

[I]nternational law has devised a number of treaty-making procedures — ratification, acceptance, approval and accession — specifically for the purpose of enabling Governments to reflect fully upon the treaty before deciding whether or not the State should become a party to it, and also of enabling them to take account of any domestic constitutional requirements.⁸⁶

Domestic processes thus provide essential opportunities for legislators, interest groups and the public to evaluate a treaty's obligations and the executive's rationales for joining the agreement.⁸⁷

Next consider the law of treaty reservations, which permits states to exclude certain obligations when joining international agreements. The *VCLT* does not prescribe a domestic process for entering reservations. Article 19 of the *VCLT* instead gives negotiating states discretion to decide whether a treaty permits or prohibits reservations, either in whole or in part.⁸⁸ It also provides a default rule for agreements that do not address this issue: states may enter reservations unless they are incompatible with the treaty's object and purpose.⁸⁹

The *VCLT* does not, however, give carte blanche to reserving states. Rather, it envisions an international review process involving multiple actors.⁹⁰ For example, arts 20 and 21 permit other state parties to object to reservations and indicate the legal effects of those objections, such as whether to accept a treaty's entry into force between the reserving state and themselves.⁹¹ Importantly, the *VCLT* does not specify the standard by which states and other actors determine whether a reservation is incompatible with a treaty's object and purpose, nor does

⁸⁴ *VCLT* (n 2) art 11.

⁸⁵ Frank Berman and Eirik Bjorge, 'Treaties and Other International Instruments IV — Ratification, Accession, Acceptance and Approval, Treaty Succession' in Ivor Roberts (ed) *Satow's Diplomatic Practice* (Oxford University Press, 8th ed, 2023) 549, 552.

⁸⁶ 'Draft Articles on the Law of Treaties with Commentaries' [1966] II *Yearbook of the International Law Commission* 187, 241–2 ('Draft Articles on the Law of Treaties'). '[W]hen joining treaties, constitutional rules are protected by a variety of procedural requirements that will ensure, or at least encourage, the state to go back to its own internal processes for approval': Woolaver, 'From Joining to Leaving' (n 18) 98.

⁸⁷ The importance of domestic processes for treaty ratification has also received attention in international relations scholarship: see, eg, Yoram Z Haftel and Andrew Thompson 'Delayed Ratification: The Domestic Fate of Bilateral Investment Treaties' (2013) 67(2) *International Organisation* 355.

⁸⁸ *VCLT* (n 2) art 19(a)–(b).

⁸⁹ *Ibid* art 19(c).

⁹⁰ For a concise analysis of the *VCLT* reservations regime: see Edward T Swaine, 'Treaty Reservations' in Duncan B Hollis (ed), *Oxford Guide to Treaties* (Oxford University Press, 1st ed, 2012) 277, 285.

⁹¹ *VCLT* (n 2) arts 20–1.

it indicate the legal consequences of incompatibility.⁹² These rules have generated numerous disagreements, in particular relating to human rights conventions. This is because such conventions have attracted more reservations than treaties governing other subjects,⁹³ and because state parties, international courts, and treaty bodies have decided that certain reservations contravene the conventions' object and purpose.⁹⁴

Partly in response to these disagreements, the ILC issued a comprehensive *Guide to Practice on Reservations to Treaties* ('ILC Guide').⁹⁵ Adopted in 2011 after nearly two decades of study,⁹⁶ the *Guide* makes extensive references to human rights treaties as archetypal examples for improving the law of reservations in general.⁹⁷ Importantly for present purposes, the ILC makes four process-based recommendations that offer insights for developing a process-based approach for evaluating the end of treaty relationships.

First, the ILC invites states to provide reasons for their reservations even when such explanations are not legally required by the treaties themselves or by the *VCLT*.⁹⁸ Drawing inspiration from the *European Convention on Human Rights* — which does mandate such justifications — the *Guide* praises reason giving as 'a useful way for both the author of the reservation and the other concerned States, international organizations or monitoring bodies to fulfil their responsibilities

⁹² For an analysis of the legal consequences of invalid reservations to human rights treaties: see Ryan Goodman, 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96(3) *American Journal of International Law* 531.

⁹³ Başak Çalı and Mariana Montoya, *The March of Universality? Religion-Based Reservations to the Core UN Treaties and What They Tell Us About Human Rights and Universality in the 21st Century*, Universal Rights Group (Policy Report, May 2017) <https://www.universal-rights.org/wp-content/uploads/2017/05/Policy_report_march_universality_LR_spread.pdf>, archived at <<https://perma.cc/3ZKY-B4CE>>.

⁹⁴ *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts 74 and 75) (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No 2, 24 September 1982) [20]–[22]; Committee on the Elimination of Discrimination Against Women, *Report of Committee on the Elimination of Discrimination against Women: General Recommendations Nos 2, 3, 4*, UN Doc A/42/38 (15 May 1987) [577]–[579]; *Belilos v Switzerland* (1988) 132 Eur Ct HR (ser A) 31; UN Human Rights Committee, *General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, 52nd sess, 1382nd mtg, UN Doc CCPR/C/21/Rev.1/Add.6 (11 November 1994) 1 [1]; *Ezzat v Egypt (Judgment)* (African Commission on Human and Peoples' Rights, Communication No 355/07, 17 February 2016) 31 [156].

⁹⁵ International Law Commission, *Guide to Practice on Reservations to Treaties*, 63rd sess, UN Doc A/66/10 (2011) ('ILC Guide').

⁹⁶ Ibid 19 [74]. For a discussion of how the *ILC Guide* evolved with regard to its analysis of international human rights agreements, see Ineta Ziemele and Lasma Liede, 'Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6' (2013) 24(4) *European Journal of International Law* 1135.

⁹⁷ Noting that the interaction between generalist public international lawyers and human rights lawyers has helped in revisiting the reservations regime and not only for the benefit of human rights treaties, see Marko Milanovic and Linos Alexander Sicilianos, *Reservations to Treaties: An Introduction* (2013) 24(4) *European Journal of International Law* 1055, 1056–7.

⁹⁸ 'A reservation should, to the extent possible, indicate the reasons why it is being formulated': *ILC Guide*, UN Doc A/66/10 (n 96) 23 (guideline 2.1.2).

effectively'.⁹⁹ In particular, it facilitates 'cooperat[ion]' among these actors over the assessment of a reservation's validity by 'establish[ing] a fruitful reservations dialogue among' these actors.¹⁰⁰

Second, the *ILC Guide* recognises that a multiplicity of actors — other state parties, international organisations, dispute settlement mechanisms, and treaty monitoring bodies — all have a role to play in evaluating the validity of a reservation.¹⁰¹ Drawing inspiration from the practice regarding human rights treaties in particular, the ILC describes these 'various modalities' as 'mutually reinforcing': when combined and harmoniously applied, they 'strengthen [the] overall effectiveness' of the reservations regime.¹⁰²

Third, the *Guide* clarifies the role of treaty depositaries. Although emphasising that it 'is no part of the [depository's] functions to adjudicate on the validity of ... [a] reservation',¹⁰³ the ILC identifies a process-based role for depositaries with regard to 'manifestly impermissible' reservations.¹⁰⁴ When a state files such a reservation, 'the depositary shall draw the attention of the author of the reservation to what, in the depositary's view, constitutes the grounds for the impermissibility of the reservation'.¹⁰⁵ If the reserving state 'maintains the reservation, the depositary shall communicate the text' to other state parties and the relevant international organisation, 'indicating the nature of legal problems raised by the reservation'.¹⁰⁶ This information, in turn, facilitates the constructive reservations dialogue among the actors described above.

A fourth process-related recommendation concerns the legal effects of reservations that arise at the intersection of treaties, customary international law and *jus cogens*. With regard to custom, the ILC makes two key points: first, '[t]he fact that a treaty provision reflects a customary norm is a pertinent factor in assessing the validity of a reservation to that provision', and second, such a reservation 'does not affect the binding nature of that customary norm', which

⁹⁹ International Law Commission, *Report of the International Law Commission: Sixty-Third Session*, UN GAOR, 66th sess, Agenda Item 91, Supp No 10, A/66/10/Add.1 (2011) 135–6 [4] (guideline 2.1.2) ('*ILC Commentaries*'). Although it is desirable that 'reasons should accompany the reservation and be an integral part thereof ... there is nothing to prevent a State ... from stating the reasons for its reservation *ex post facto*': at 137 [8] (guideline 2.1.2).

¹⁰⁰ Ibid 136 [5]–[6] (guideline 2.1.2). 'States... that have formulated reservations to a treaty establishing a treaty monitoring body shall give full consideration to that body's assessment of the permissibility of the reservations...': *ILC Guide*, UN Doc A/66/10 (n 95) guideline 3.2.3.

¹⁰¹ *ILC Guide*, UN Doc A/66/10 (n 95) 37 guideline 3.2. For example, 'human rights treaty bodies are competent to assess the permissibility of a reservation, including the compatibility of the reservation with the object and purpose of the treaty, when the question comes before them in the exercise of their functions': at *ILC Commentaries*, A/66/10/Add.1 (n 99) 395 [6] (guideline 3.2). With regard to the importance of dialogue and communication between treaty bodies and states over the validity of reservations, see also Pergantis (n 41) 314–21.

¹⁰² *ILC Commentaries*, A/66/10/Add.1 (n 99) 391 [1], 399 [14] (guideline 3.2).

¹⁰³ 'Draft Articles on the Law of Treaties' (n 86) 269–70 [4] (commentary), quoted in *ILC Commentaries*, A/66/10/Add.1 (n 99) 163–4 [9] (guideline 2.1.7).

¹⁰⁴ This includes reservations that contravene a treaty's object and purpose — the standard applicable to most international human rights instruments: *ILC Commentaries*, A/66/10/Add.1 (n 99) 165 [13] (guideline 2.1.7).

¹⁰⁵ International Law Commission, *Report of the International Law Commission: Fifty-Eight Session*, UN GAOR, 61st sess, Supp No 10, UN Doc A/61/10 (2006) 359–61 quoted in *ILC Commentaries*, A/66/10/Add.1 (n 99) 165 n 619 (guideline 2.1.7).

¹⁰⁶ Ibid.

continues to apply between the reserving and non-reserving states.¹⁰⁷ The ILC adopts a similar position regarding *jus cogens*, concluding that '[a] reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law'.¹⁰⁸ These observations underscore the need to assess the precise consequences of a reservation with regard to a state's continuing obligations under other sources of international law.

As the foregoing discussion shows, process-based approaches occupy a central place in existing treaty practice (ratifications) and in recommendations for progressive development to close gaps in treaty law (reservations). In what follows, we extend such approaches to unilateral executive withdrawals from international human rights instruments.

B *A Process-Based Approach for Evaluating Withdrawals*

This section sets forth the content of a process-based approach to scrutinising unilateral withdrawals from international human rights instruments. We focus primarily on existing human rights treaties that expressly authorise exit,¹⁰⁹ but we also explain how the approach can inform the design of future treaties. In line with other process-based approaches, our proposal promotes disclosure, reason giving and opportunities for all actors affected by a denunciation to review and contest the executive's denunciation decision in domestic and international forums. As we explain, a process-based approach — which builds upon recent trends in national and international law — is well suited to alleviate the problems engendered by the permissive approach to unilateral withdrawals from human rights instruments, discussed previously. The approach can also advance the progressive development of international law and promote the harmonious interaction of domestic and international rules governing such withdrawals.

1 *Providing Reasons for a Proposed Exit*

The foundation of the process-based approach is a requirement that the executive publicly explain the reasons for its exit proposal and provide an opportunity for domestic and international actors to evaluate and challenge the proposal. We recognise that denunciation and withdrawal clauses in human rights treaties do not require such explanations. But they do not preclude them, and

¹⁰⁷ International Law Commission, *Report of the International Law Commission: Sixty-Second Session*, UN GAOR, 65th sess, Agenda Item 79, Supp No 10, A/65/10 (2010) 58 [1] (guideline 3.1.8) ('*ILC Report 62nd Session*'). Concerning human rights treaties in particular, the *Guide* cites with approval to a working paper which concludes that 'reservations to provisions which reflect customary international law norms are likely to be viewed with considerable suspicion': Françoise Hampson, *Specific Human Rights Issues: Reservations to Human Rights Treaties*, 56th sess, Agenda Item 6, UN Doc E/CN.4/Sub.2/2004/42 (2004) 15 [51].

¹⁰⁸ *ILC Report 62nd Session* (n 107) 58 (guideline 3.1.9).

¹⁰⁹ Our proposal does not revise the status quo regarding the small number of human rights conventions that lack a denunciation or withdrawal clause. We agree with the settled understanding that a state may not unilaterally withdraw from such conventions: Tyagi (n 2) 90, 102.

executive officials have sometimes provided justifications in notices of withdrawal¹¹⁰ or in contemporaneous public statements.¹¹¹

Similar to the rationale for legislative debate and approval of treaties prior to ratification, and to the *ILC Guide*'s recommendation that states provide a rationale for filing reservations,¹¹² giving reasons for a proposed denunciation serves two salutary functions: first, it provides an opportunity for the executive to clarify the legal, political and/or institutional concerns that, in its view, justify not continuing as a treaty party; and second, it enables domestic and international actors to evaluate these concerns, assess the validity of the withdrawal under domestic and international law and, if appropriate, challenge the executive's decision.

Once the executive has publicly explained the rationales for a proposed exit, the process-based approach calls for expanding opportunities to scrutinise these justifications. Within the denouncing state, legislatures, courts, civil society organisations, NHRIs and individuals all have an interest in such an evaluation. Externally, other state parties, international courts and review bodies, international organisations, and treaty depositories can assess the executive's withdrawal proposal and the justifications offered to support it. The discussion that follows first describes how the process-based approach unfolds at domestic level. We then consider how international actors could contribute to that approach.

2 Process-Based Review at the Domestic Level

National legislatures are well placed to ensure that a state's decision to quit a human rights treaty is made with the same degree of deliberation and democratic legitimacy as the decision to join the treaty. Even in countries where formal parliamentary endorsement of treaty exit is not required, consultations between the executive and the legislature — for example, during public hearings — can have important benefits. They can help to clarify the justifications for withdrawal, assess its legal basis, investigate the consequences of exit for other areas of domestic law and explore whether less rights-restrictive measures would address the executive's concerns.¹¹³ In states where it is uncertain whether the Parliament must approve a withdrawal, national courts can adjudicate complaints alleging that such approval is constitutionally required. This occurred, for example, when the High Court of South Africa abrogated the President's unilateral withdrawal from the ICC,¹¹⁴ and more recently, in a case challenging a Presidential Decree that purported to give domestic effect to Brazil's denunciation of *International Labor*

¹¹⁰ See, eg, Mejia-Lemos (n 12).

¹¹¹ See, eg, Dapo Akande, 'South African Withdrawal from the International Criminal Court – Does the ICC Statute Lead to Violations of Other International Obligations?', *EJIL:Talk!* (Blog Post, 22 October 2016) <<https://www.ejiltalk.org/south-african-withdrawal-from-the-international-criminal-court/>>, archived at <<https://perma.cc/2KV7-77FS>>.

¹¹² 'Draft Articles on the Law of Treaties' (n 86) 241–2; *ILC Guide*, UN Doc A/66/10 (n 95) 23 guideline 2.1.2.

¹¹³ Formal legislative approval and public hearings further the 'clear trend towards parliamentary involvement in the denunciation of treaties, more specifically those treaties which were ratified with the engagement of Parliament': European Commission for Democracy Through Law, *Venice Commission Ratification and Denunciation Report* (n 48) 76 [287].

¹¹⁴ As summarised in the introduction to this article: see above Part I.

Organisation Convention No 158 on the Termination of the Employment Relationship at the Initiative of the Employer ('ILO Convention No 158').¹¹⁵

While the process-based approach enables legislatures and courts to defend their institutional interests, it also provides opportunities for individuals and civil society organisations to evaluate whether and how exit will diminish human rights protections.¹¹⁶ Such rights retrogressions can arise both domestically — as when national constitutions, legislation and case law are no longer influenced by the normative evolution of the denounced treaty — and internationally — by cutting off access to regional or sub-regional courts and UN treaty body complaint mechanisms that enable individuals to hold states accountable for violations. The risk of diminished rights protections may provide a basis for domestic litigation, as occurred when Brazil's National Confederation of Trade in Goods, Services and Tourism challenged the constitutionality of the denunciation of the *ILO Convention No 158* before the Supreme Tribunal of Brazil on the ground that it diminished labour rights.¹¹⁷ Even if domestic litigation is ultimately unsuccessful, it can raise the public profile of efforts to contest the denunciation and provide time for domestic coalitions to mobilise to pressure the executive to reconsider its decision.

Domestic lawsuits challenging a proposal to exit — whether by legislators, rights holders or civil society organisations — may be initiated before the executive files a formal notice of withdrawal, during the notice period or after the denunciation takes effect. The process-based approach favours a judicial resolution before the executive acts, as occurred when the UK Prime Minister refrained from filing a notice of withdrawal from the *Treaty on European Union* until the UK Supreme Court ruled that parliamentary approval was constitutionally required, in part because the treaty was 'a source of domestic legal rights many of which are inextricably linked with domestic law from other sources'.¹¹⁸ However, judicial review during the notice period can also be impactful, as illustrated by the South African High Court decision invalidating the President's unilateral denunciation of the *Rome Statute*.¹¹⁹ In that case, the President revoked the notice

¹¹⁵ *Convention (No 158) Concerning the Termination of Employment at the Initiative of the Employer*, opened for signature 22 June 1982, 1985 UNTS 160 (entered into force 23 November 1985); Supremo Tribunal Federal [Federal Supreme Court of Brazil], *Ação declaratória de constitucionalidade 39 Distrito Federal* [Declaratory Action of Constitutionality N. 39], [19 June 2023] ADC 39/DF. We relied on Lucas Carlos Lima's helpful analysis see Lucas Carlos Lima, 'Declaratory Action of Constitutionality N. 39 of Brazilian Supreme Court' (2024) 118(4) *American Journal of International Law* 704.

¹¹⁶ This approach finds support in studies of domestic compliance constituencies that pressure governments to implement the judgments of international human rights tribunals. See, eg, Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge University Press, 2014); Rainer Grote, Mariela Morales Antoniazzi and Davide Paris (eds), *Research Handbook on Compliance in International Human Rights Law* (Edward Elgar Publishing, 2021); Florencia Montal and Gino Pauselli, 'Is the Bad News about Compliance Bad News about Human Rights? Evidence from the Inter-American Commission on Human Rights' (2023) 67(2) *International Studies Quarterly* squad027:1–12.

¹¹⁷ Lima (n 115) 705.

¹¹⁸ *Treaty on the European Union*, opened for signature 7 February 1992 [1992] OJ C 191/1 (entered into force 1 November 1993); *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, 29 [86] (Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption and Lord Hodge).

¹¹⁹ *Democratic Alliance* (n 25) [39]–[56].

rather than appeal the High Court ruling. If the litigation is likely to extend beyond the notice period, the executive should ask the treaty depository to suspend the denunciation until the highest court in the jurisdiction has evaluated its legality. Although suspension is not explicitly provided for in any human rights instrument or in the *VCLT*, such a request is consistent with the rule that states may revoke treaty notifications — including withdrawal notices — at any time before they take effect.¹²⁰

Domestic litigation may not, however, prevent a denunciation, a situation illustrated by Türkiye's withdrawal from the *Istanbul Convention*. Women's groups and bar associations filed multiple petitions with the Supreme Administrative Court alleging that the executive's withdrawal was unconstitutional without parliamentary involvement or was invalid as applied to human rights treaties. The Council of Europe nevertheless gave effect to the withdrawal three months after Türkiye filed its notification in June 2021. Domestic judicial challenges were decided well after the notice period expired.¹²¹ This sequence of events strengthens the argument for a process-based approach that facilitates domestic scrutiny of executive treaty withdrawals. Had the President consulted with Parliament or civil society groups rather than issuing a late-night unilateral decree, the withdrawal might not have occurred or litigation challenging it might have concluded before the executive filed the notice.

3 Process-Based Review at the International Level

We next explain how the process-based approach could be implemented at the international level. In terms of timing, international review should generally wait until after scrutiny by national parliaments, civil society groups and courts has ended. This is consistent with the exhaustion of local remedies and subsidiarity principles that are hallmarks of all international human rights systems.¹²² Where, however, domestic processes are absent, impractical, or unreasonably prolonged, international actors need not wait to scrutinise a unilateral withdrawal.¹²³ For example, giving priority to domestic processes may be difficult or impossible when the executive does not engage in pre-notification consultations, and treaties

¹²⁰ See, eg, Antonios Tzanakopoulos, '1969 Vienna Convention: Article 68 Revocation of Notifications and Instruments Provided for in Articles 65 and 67' in Olivier Corten and Pierre Klein (eds), *The Vienna Convention on the Law of Treaties: A Commentary* (Oxford University Press, 2011) 1564, 1564; Gino Naldi and Konstantinos Magliveras, 'The Right to Revoke Withdrawal Notices from International Organizations: The Case of Brexit and the European Union' (2021) 28(1) *Maastricht Journal of European and Comparative Law* 30, 44.

¹²¹ See, eg, İdari Dava Daireleri Kurulu [Supreme Administrative Court of Türkiye], *Türk Tabipleri Birliği v Cumhurbaşkanlığı* [Turkish Medical Association v The Office of the President], 2022/3782, 19 December 2022 <https://www.ttb.org.tr/userfiles/files/istanbul_sozlesmesi_temyiz_ret.pdf> [tr Google], archived at <<https://perma.cc/YB6L-CHS6>>.

¹²² See, eg, Paolo G Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law' (2003) 97(1) *American Journal of International Law* 38; Alain Zysset and Başak Çalı, 'Exhausting Domestic Remedies or Exhausting the Rule of Law? Revisiting the Normative Basis of Procedural Subsidiarity in the European Human Rights System' (2023) 14(2) *Transnational Legal Theory* 157.

¹²³ These exceptions also have extensive pedigrees in international human rights law: see, eg, Jo M Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (Cambridge University Press, 2nd ed, 2013) 92–101.

with notice periods of less than one year may not provide an adequate time for all phases of domestic litigation.

A range of international actors — including other state parties, international courts and monitoring bodies and treaty depositaries — have the ability to review, and in appropriate circumstances to challenge, withdrawals from human rights instruments. Review by these actors need not result in a finding that a denunciation violates international law. Rather, similar to the process-based recommendations that the *ILC Guide* endorses with regard to reservations, international review provides an opportunity for all affected actors to engage in a dialogue with the exiting state's representatives, to assess the rationales offered for a withdrawal and to suggest why the state should remain a treaty party.¹²⁴ Such a review — which ideally should occur before the withdrawing state submits its notification to the treaty depositary or during the notice period that follows — can also encourage the state to follow the domestic processes described above, such as submitting a withdrawal proposal to the legislature and consulting with rights holders and civil society organisations.

International scrutiny may be especially effective in highlighting the limited practical benefits of quitting a single treaty in the nested international human rights system. As previously explained, a withdrawing state remains bound by *jus cogens*, by other global and regional human rights treaties it has ratified and by customary law, which will often protect the same rights as are enshrined in the denounced convention.¹²⁵ International actors can underscore the risks of violating these obligations if the state restricts these rights after its withdrawal. Such arguments — and the political pressure that accompanies them — could occur, for example, during the periodic meetings of state parties that many human rights conventions require.¹²⁶

The most relevant precedent for a process-based international review of exit is the IACtHR's 2020 *Advisory Opinion* on unilateral withdrawals from human rights treaties, discussed in the introduction to this article. The Court reasoned that OAS member states and institutions are obligated to take 'swift, collective action to address possible denunciations', and to 'contain a government's impulse to extricate itself from its international human rights obligations'.¹²⁷ Such actions include reviewing 'the context and formal conditions in which the decision to denounce is taken at the domestic level and its correspondence with the established constitutional procedures' as well as 'an assessment of the democratic nature of the decision'.¹²⁸ The Court also emphasised that the withdrawing state 'is not

¹²⁴ See Pergantis (n 41) 187, arguing for

a kind of *dialogue dénonciateur*, in which both States and treaty bodies will participate: the first through diplomatic channels and the power of persuasion, as well as through the means provided for in the treaty for discouraging a State from withdrawing, and the latter through decisions, recommendations and General Comments.

¹²⁵ '[W]here a treaty is terminated in relation to a party, that State may nevertheless be bound by individual provisions of the terminated treaty, either under another (still effective) treaty or under the relevant rules of customary law': see Dörr and Schmalenbach (n 44) 1202.

¹²⁶ See, eg, *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 40.

¹²⁷ IACtHR *Advisory Opinion on Denunciations* (n 21) [170], [171].

¹²⁸ Ibid [171], [172].

released from obligations arising from its ratification of other inter-American human rights treaties, which remain in effect'.¹²⁹

Although the IACtHR focused on the regional human rights system, the principles in the *Advisory Opinion* apply with equal force to withdrawals from any international human rights instrument. This finds support in art 70 of the *VCLT*, which provides that a denunciation or withdrawal from a multilateral treaty '[d]oes not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to' the date when such action takes effect.¹³⁰ As a result of this provision, disputes relating to a denounced human rights treaty can be

referred to organs established by these treaties when contentions arise regarding acts preceding the denunciation, that is on the body of continuous obligations concerning the respect of human rights that have been — or should have been — executed.¹³¹

The possibility of adjudicating such disputes 'target[s] a fundamental objective, namely that of dissuading a State from denouncing a treaty in order to escape a condemnation it deems to be inevitable'.¹³²

If an international court with jurisdiction subsequently finds a denunciation to be invalid, that decision could be enforced by the treaty depository. This would extend the *ILC Guide's* conclusion that a depository can question 'manifestly impermissible' reservations.¹³³ The response to North Korea's purported withdrawal from the *ICCPR* in 1997 offers a relevant precedent. Both the Human Rights Committee and the UN Secretary-General (acting as depository) concluded that North Korea's denunciation attempt was invalid because the *ICCPR* does not contain an exit clause. North Korea resumed cooperating with the Committee several years later.¹³⁴

4 *Application to Future Domestic and International Lawmaking*

The process-based approach primarily focuses on withdrawals from existing human rights instruments. However, the approach can also inform future domestic and international lawmaking.

At the domestic level, a range of reforms can be used to enhance parliamentary review of executive treaty withdrawals. Statutes or regulations could, for example, be revised to augment legislative consultations or incentivise participation by civil

¹²⁹ Ibid [89].

¹³⁰ *VCLT* (n 2) art 70(1)(b).

¹³¹ Hervé Ascensio, '1969 Vienna Convention: Article 70 Consequences of the Termination of a Treaty' in Olivier Corten and Pierre Klein (eds), *The Vienna Convention on the Law of Treaties* (Oxford University Press, 2011) 1585, 1607. International human rights courts and monitoring bodies accept individual petitions alleging violations by the exiting state that are filed prior to the withdrawal's effective date: see, eg, *Umuhoza v Republic of Rwanda* (African Court on Human and Peoples' Rights, App No 003/2014, 24 November 2017). Some have even accepted petitions filed subsequent to the effective date 'if the effects of those [violations] continue or are not manifested until after that date': *Roodal v Trinidad and Tobago (Judgment)* (Inter-American Commission on Human Rights, Report No 89/01, OEA/Ser. L./V/II.114, Doc 5, 10 October 2001) [23]. See also *Hilaire v Trinidad and Tobago (Judgment)* (Inter-American Court of Human Rights, Series C No 80, 1 September 2001) [28].

¹³² Ascensio (n 131) 1607.

¹³³ *ILC Commentaries*, A/66/10/Add.1 (n 99) 165 [13] (guideline 2.1.7).

¹³⁴ For a recent discussion, see Morelli (n 11) 129.

society organisations. In states where treaty powers are centralised in the executive, however, amendments to the constitution will likely be required. Because such amendments are often time-consuming and politically contentious, international scrutiny of withdrawal decisions can help to compensate for any shortcomings in existing domestic review processes.¹³⁵

Our proposal also has insights for the design of new human rights treaties. For example, several elements of the process-based approach take time to be effective. This suggests the need for longer notification periods for treaties currently being negotiated, such as the *Draft Convention on the Right to Development* or the legally binding instrument on business and human rights.¹³⁶ There is precedent for such innovations in the *Istanbul Convention*, which contains novel provisions on the validity, continuity and review of reservations.¹³⁷ The ILC may also play an important role in the progressive development of process-based limits on unilateral withdrawal.

IV POTENTIAL OBJECTIONS AND RESPONSES

This part considers three potential objections to our proposal. First, a process-based approach that blends international and domestic laws, institutions and review mechanisms is not practicable. Second, the approach has negative consequences, in particular diminishing the incentives for states to join human rights agreements and compelling states that are likely to violate their obligations to remain as treaty parties. Finally, a process-based approach can do little to constrain exit by states with authoritarian or populist governments, which are responsible for most recent denunciations of human rights instruments such as those discussed earlier. The discussion that follows describes each of these counter-arguments in greater detail and sets forth our responses.

The first counterargument focuses on our recommendation that the international regulation of treaty exit should be closely linked to and sequenced with certain domestic rules and procedures, such as consultation with civil society groups, scrutiny by parliaments and litigation before national courts. According to this objection, such an approach disregards the fact that national and international law are separate legal systems (although the degree of separation varies across jurisdictions). Whether the decision to denounce a treaty complies with the exiting state's constitution or legislation should thus be irrelevant to whether the denunciation satisfies the requirements for validity in international law.

The bifurcation of domestic and international law is not, however, a “one size fits all” standard. *VCLT* provisions separate the two systems in order to shield the

¹³⁵ See Anne Peters, ‘Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures’ (2006) 19(3) *Leiden Journal of International Law* 579.

¹³⁶ See, eg, Human Rights Council, ‘Second Revised Text of the Draft of the Convention on the Right to Development, with Commentaries’, UN GAOR, 24th sess, Agenda Item 4, UN Doc A/HRC/WG.2/24/2/Add.1 (12 January 2023); Business & Human Rights Resource Centre, ‘UN Intergovernmental Working Group Releases Updated Draft of Legally Binding Instrument on Business and Human Rights’ (Media Release, 7 August 2023) <<https://www.business-humanrights.org/en/latest-news/un-intergovernmental-working-group-releases-updated-draft-of-legally-binding-instrument-on-business-and-human-rights>>, archived at <<https://perma.cc/3RAS-ZB8U>>.

¹³⁷ See Wojciech Burek, ‘Reservations to the Istanbul Convention and the Role of GREVIO: A Call for New Approach’ (2022) 22(4) *Human Rights Law Review* ngac030:1–18, 1–2.

stability of treaty commitments from excessive or arbitrary appeals to domestic law. Article 27 of the *VCLT*, for example, provides that '[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.¹³⁸ This provision seeks to curb invocations of domestic law with a specific purpose: to block a state's compliance with its treaty obligations. Article 46 of the *VCLT*, in contrast, recognises extremely narrow circumstances in which a state can invoke a violation of its internal law to invalidate its consent to be bound to a treaty. Article 46 precludes a state from raising this argument 'unless that violation was manifest and concerned a rule of its internal law of fundamental importance'.¹³⁹ According to the International Court of Justice, domestic law limits on the executive branch's power to bind a state to a treaty are of 'fundamental importance'.¹⁴⁰ They are not, however, 'manifest' for two reasons: first, 'because Heads of State belong to the group of persons who ... "[i]n virtue of their functions and without having to produce full powers" are considered as representing their State';¹⁴¹ and, second, because 'there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States.'¹⁴²

On its face, art 46 applies only to treaty ratifications and accessions.¹⁴³ Yet the policy rationales underlying the provision favour applying the same approach to withdrawals. As the ILC commentary on the draft articles of the *VCLT* explains, 'the rule concerning evidence of authority to denounce, terminate, etc, should be analogous to that governing "full powers" to express the consent of a State to be bound by a treaty'.¹⁴⁴ The *VCLT* thus recognises that the same executive officials are authorised both to bind and unbind the state.¹⁴⁵ In addition, the functional rationales for allowing countries to rely on the apparent authority of other states' agents and not imposing a duty to investigate internal treaty-making procedures are equally applicable to facially valid exit notices. Thus, just as a treaty entered into by an authorised executive branch official in violation of a national constitution does not invalidate the state's consent to be bound,¹⁴⁶ so too a notice of withdrawal by that same official will, under this approach, end the state's status as a treaty party even if the withdrawal contravenes the constitution.¹⁴⁷

Furthermore, these *VCLT* provisions do not account for the fact that many international treaties themselves include references to domestic law in delineating states' international obligations. This is widespread in, but not exclusive to, human

¹³⁸ *VCLT* (n 2) art 27.

¹³⁹ Ibid art 46(1). The article further provides that '[a] violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith': at art 46(2).

¹⁴⁰ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening) (Judgment)* [2002] ICJ Rep 303, 430 [265] ('*Land and Maritime Boundary*').

¹⁴¹ *VCLT* (n 2) art 7(2) quoted in *Land and Maritime Boundary* (n 140) [265], [266].

¹⁴² *Land and Maritime Boundary* (n 140) [265].

¹⁴³ *VCLT* (n 2) art 46.

¹⁴⁴ 'Draft Articles on the Law of Treaties with Commentaries' (n 86) 264.

¹⁴⁵ *VCLT* (n 2) art 67(2).

¹⁴⁶ Mark E Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff, 2009) 589.

¹⁴⁷ Helfer, *Treaty Exit and Intrabranh Conflict* (n 18) at 362–3.

rights instruments.¹⁴⁸ Such references are premised on — and indeed are designed to enhance — a complementary and symbiotic relationship between international and domestic law. The principle of subsidiarity, for example, recognises that human rights are most effectively protected at home.¹⁴⁹ And the exhaustion of (effective) domestic remedies rule provides national decision-makers a meaningful opportunity to address human rights violations before they are raised at the international level.¹⁵⁰ Our proposal extends the longstanding complementarity of domestic and international law reflected in these principles to human rights treaty withdrawals to expand opportunities for seeking a domestic remedy against an act that could significantly undermine internationally protected rights.

A second objection is that our proposal gives insufficient consideration to the costs of modifying the permissive approach to unilateral exit. In particular, a process-based approach could create disincentives for states to ratify human rights instruments in the first instance. It might also induce states that seek to violate human rights to remain as treaty parties, contributing to a culture of noncompliance and resistance to monitoring by international human rights institutions.

As for the disincentive to join human rights conventions, some of the most widely ratified human rights conventions — including the *ICCPR*, *CEDAW*, the *ICESCR* and the *African Charter* — do not have withdrawal or denunciation clauses.¹⁵¹ As noted above, these treaties are understood as proscribing exit under any circumstance.¹⁵² The large number of parties to these agreements strongly suggests that states have not been deterred from joining human rights treaties that impose more extensive constraints on sovereignty than the process-based approach that we propose.

Another concern is that states that remain as treaty parties in response to domestic or international pressure are more likely to violate human rights or resist the scrutiny of international courts and monitoring bodies. Such a result would keep ‘[i]nsincere’ states as members,¹⁵³ potentially destabilising a system that is

¹⁴⁸ In many human rights treaties, restrictions and limitations must be prescribed by or in conformity with domestic law: see, eg, *ICCPR* (n 2) arts 18, 21, 22.

¹⁴⁹ See, eg, Andreas Føllesdal, ‘Subsidiarity and International Human Rights Courts: Respecting Self Governance and Protecting Human Rights — or Neither?’ (2016) 79(2) *Law and Contemporary Problems* 147; Samantha Besson, ‘Subsidiarity in International Human Rights Law — What Is Subsidiary about Human Rights?’ (2016) 61(1) *American Journal of Jurisprudence* 69.

¹⁵⁰ See, eg, Françoise Hampson, Claudia Martin and Frans Viljoen, ‘Inaccessible Apexes: Comparing Access to Regional Human Rights Courts and Commissions in Europe, the Americas, and Africa’ (2018) 16(1) *International Journal of Constitutional Law* 161; Helfer, *Embeddedness* (n 46) 128; Cesare P R Romano, ‘The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures’ in Nerina Boschiero et al (eds) *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (Springer, 2013) 561, 561.

¹⁵¹ As of 1 January 2025, the *ICCPR*, *ICESCR* and *CEDAW* have been ratified by 173, 174, and 189 States, respectively. The *African Charter* has been ratified by 54 countries on the African continent.

¹⁵² See Tyagi (n 2) 116–24.

¹⁵³ On the distinction between sincere and insincere human rights treaty ratifications, see Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009) 77.

already under severe pressure from democratic backsliding, rising geopolitical tensions and reduced financial support.¹⁵⁴

We do not dismiss the risk that narrowing exit may increase domestic resistance to international human rights norms and institutions.¹⁵⁵ Whether and to what extent such a risk materialises, however, depends on which actors implement our proposal, which elements they select, and the time horizons over which implementation of the proposal occurs. For example, if a national constitutional court abrogates an executive withdrawal attempt for failing to consult with Parliament, any opposition to that result is likely to focus on domestic rather than international actors. In contrast, a UN treaty body that requests an explanation for a denunciation or recommends consultations with civil society groups imposes only modest constraints on a state's freedom to withdraw.

In addition, if a government is already repressive domestically or resistant to international oversight, our process-based proposal is unlikely to make its behaviour much worse. Moreover, even in oppressive states, remaining as a party to a human rights treaty keeps open a line of communication between individuals and NGOs and international monitoring or complaints mechanisms, thus providing important support for domestic human rights advocacy. Moreover, authoritarian regimes may later return to at least a modicum of cooperation — as North Korea did several years after its failed attempt to withdraw from the *ICCPR* — or to more sincere engagement after a change of government — as occurred with the Inter-American system following democratic transitions in Latin America in the 1980s.¹⁵⁶

A third counterargument is that our proposal can do little to constrain exit by states with authoritarian or populist governments. For such governments, withdrawals from human rights instruments are part of broader strategies to oppose domestic or international institutions that seek to constrain the political leaders of such governments.¹⁵⁷ According to this view, making international human rights treaties more restrictive plays only a negligible role in constraining such strategies.

In response, we maintain that a process-oriented approach provides tools to empower individuals and NGOs to challenge anti-human rights actions and rhetoric domestically (as evidenced by national court litigation in Türkiye) and opportunities for other states and international bodies to challenge withdrawal decisions at the international level (as illustrated by the IACtHR advisory opinion motivated by Venezuela's denunciations).¹⁵⁸ These efforts may not yield short-term results, but they help the actors that promote human rights to '[play] a long

¹⁵⁴ See, eg, Laurence R Helfer, 'Populism and International Human Rights Institutions: A Survival Guide' in Gerald L Neuman (ed) *Human Rights in a Time of Populism: Challenges and Responses* (Cambridge University Press, 2020) 218, 218–19; Wayne Sandholtz, 'Authoritarianism, International Human Rights, and Legal Change' in David L Sloss (ed) *Is the International Legal Order Unraveling?* (Oxford University Press, 2022) 363.

¹⁵⁵ 'Holding States captive against their wishes within a treaty regime may seriously undermine this regime's efficacy': see Pergantis (n 41) 187.

¹⁵⁶ Tyagi (n 2) 169–70; Alexandra Huneus, 'Introduction to Symposium on the Constitutionalization of International Law in Latin America' (2015) 109 *AJIL Unbound* 89.

¹⁵⁷ See above Part II(B)(3).

¹⁵⁸ Florian Kriener, 'Effectiveness vs. Legitimacy of Governments at the IACtHR', EJIL:Talk! (Blog Post, 7 August 2025) <<https://www.ejiltalk.org/effectiveness-vs-legitimacy-of-governments-at-the-iacthr/>>, archived at <<https://perma.cc/UY9F-8YEJ>>.

game, laying down institutional and jurisprudential markers for the future, and waiting for more favorable conditions to arise'.¹⁵⁹ The process-based approach can thus contribute to the evolving collective politics of human rights at the intersection of domestic and international law.¹⁶⁰

V CONCLUSION

This article has presented the case for reconsidering the rules governing unilateral withdrawals from human rights treaties and declarations that recognise the jurisdiction of international human rights courts and review bodies. Once a rarity, the denunciation of these instruments has been on the rise across the globe.¹⁶¹ Against this backdrop, existing international law, which gives virtually unrestrained exit power to executive branch officials, raises significant normative and practical concerns. Normatively, a permissive withdrawal regime allows a state to exit regardless of whether its officials are systematically violating individual rights. Practically, the lack of meaningful scrutiny of unilateral exit, and the automatic effect given to exit notifications by treaty depositories, means that a withdrawal will often become final notwithstanding ongoing domestic litigation, parliamentary review or consultations with civil society groups at the national level.

We argue that these problems can best be remedied by adopting a process-based approach to respond to such withdrawals. This approach provides a middle ground between minimalistic permissive exit rules and prohibiting withdrawals entirely. The heart of our proposal focuses on sequenced domestic and international processes to evaluate the nearly unfettered authority of executive branch officials to exit from human rights treaties. This approach requires explanations of withdrawals by the executive which can then be scrutinised by different domestic and international actors.

National review processes, including legislative hearings and litigation before domestic courts, are key venues for evaluating these explanations. They also help to promote symmetry between the rules that apply to entering into treaties — ratification and reservations — and the rules governing denunciations. After domestic review processes have concluded (in most cases), international courts and monitoring bodies, other state parties and treaty depositories can also scrutinise the withdrawals, for example by supporting domestic processes, evaluating justifications, highlighting adverse consequences, and emphasising that withdrawal cannot abrogate the exiting state's subsisting human rights obligations under other treaties, customary international law and *jus cogens*.

The reactions to recent withdrawals from international human rights instruments analysed in this article reveal that multiple international and domestic actors are already evolving from a zero-scrutiny approach to unilateral exit.¹⁶² This

¹⁵⁹ Helfer, 'Populism and International Human Rights Institutions: A Survival Guide' (n 154) 234.

¹⁶⁰ Collective politics of human rights is a dynamic process that contributes to the constitutionalisation of international law: see Iain Ferguson, 'Liberal Theory' in Anthony F Lang and Antje Wiener (eds) *Handbook on Global Constitutionalism* (Edward Elgar Publishing, 2017) 106, 110.

¹⁶¹ See, eg, Tuğba Bayar and Murat Bayar, 'Unilateral Withdrawals from Multilateral International Treaties, 1945–2024' (2025) 31(2) *Global Governance* 163, 176–80.

¹⁶² See above Part III(B)(2).

response is consistent with the tradition of human rights treaties serving as a testing ground for reassessing sovereignty-oriented rules in other areas of international law.¹⁶³ Our proposal consolidates and extends these emerging developments and provides a roadmap for the future.

The process-based approach we defend also has relevance beyond human rights instruments, extending to multilateral treaties regulating areas such as international crimes, humanitarian protection, refugee and asylum claims, labour standards and international environmental law. Similar to human rights agreements, treaties in these fields are not only (or even primarily) transactional interstate bargains, and they are embedded within a nested network of multilateral legal obligations. Opening the black box of unfettered executive power in pursuit of reason-giving, consultation, dialogue and external review in the context of human rights treaty withdrawals is thus not only timely but also has the potential to radiate more broadly across international law.

¹⁶³ See Bruno Simma, 'From Bilateralism to Community Interest in International Law' in *Collected Courses of the Hague Academy of International Law* (Brill Nijhoff, online at 2 June 1994) 217.