

Establishment and Development of the State's Right for Reservations to International Treaties in the International Law System

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Abstract. *The article is devoted to establishment and development of the state's rights for reservations to international treaties in the international law system. The author notes that the reservations institution was formed in parallel with the development of contemporary international law. Its prosperity is related to the increasing role of the international treaty as a whole and the increasing the number of multilateral treaties as a legal regulation of relations between the states. However it is still early to talk about the final design of the reservations institution - this institution continues to evolve. There are issues that have gained importance already at the contemporary stage and it is necessary to solve them, considering today's realities.*

Key words: International treaty, reservations, codification, International Court of Justice, United Nations International Law Commission, compatibility of reservation with the object and purpose of the treaty, Vienna Convention on the Law of Treaties, 1969.

Contemporary international law differs from the classic one with a number of factors. One of such factors is the extension of the scope and number of international treaties. Today it is just the international treaty is like the most optimal means of regulation of inter-state relations and the main instrument to ensure the proper level of legitimate interests of each member of the world community.

However, world practice shows that at the conclusion of multilateral treaties the interests of the subjects of international law do not always coincide, and in this regard, the right to express reservations is the important means of securing them. Due to the presence of provisions on reservations to international treaties the separate subjects of international law, not agree with a particular position or rule of the international treaty can declare about the non-applicability or partial application of the provision or standards regarding themselves.

Today the reservations are used in practice quite commonly. However, the reservations institution was a relatively new element in the system of international law.

The reservations institution was formed in parallel with the establishment of

contemporary international law¹ and has become widespread in contractual practice of the states only in the early XX century, although the first unilateral declarations of states belong to the XVIII – beginning of XIX century.

Since the beginning of the XX century, the reservation to the international treaty is gradually transformed into the independent international law Institute. Its flowering is associated with the increasing role of international treaty in whole and with the increase in the number of multilateral treaties.² However, it is still premature to speak about the final design of the reservations institution.

Francesco Parisi and Catherine Sevchenko in the history of the establishment of the reservations institution suggest to reveal the following steps:

¹ Kolesnik V.V. Reservations to international treaties: Extended abstract of dissertation ... Candidate of Juridical Sciences – M.: MSIR of the MFR of the Russian Federation, 2001; Kolesnik V.V. Codification of rules about reservation to international treaties // International public and private law. – M.: Lawyer, 2002. – No. 3. – p. 27-35.

² Kolesnik V.V. Codification of rules about reservation to international treaties // International public and private law. – M., 2002. N 3(7). - p. 27

1) before the First World War - the unanimity rule;

2) interwar period - the pan-American rule;

3) after the Second World War - the advisory opinion of the International Court of Justice 1951;

4) after the Second World War - the International Law Commission of the United Nations.³

In this case, the codification of the reservation institution occurs only at the fourth stage.

Before the First World War the approach to reservations was determined by the principle of unity: a reservation to the international treaty required the unanimous acceptance by all participants. The state – a party of the treaty could not unilaterally make the decision about the deviation from the terms of treaty.

At the same time, in parallel existing regional system adopted in the pan-American Union, the unanimity principle was not applied. In general, the reservations were examined as undesirable. But in some cases they were available. Namely, if the state expressed a desire to ratify the treaty with reservations, firstly, it had to pass the draft of ratification instruments to the Depository, whose function included its introduction to all parties of the treaty. If there are objections, the state was encouraged to reconsider its position and either to reformulate the reservation or to refuse it.⁴

The pan-American system has become the deviation from the classical model and served as the prototype of the contemporary regime of reservations. It has established a process of individual acceptance of a reservation to a treaty. Each state had the right to determine which consequences the examined reservation would have for obligations contained in the treaty at the time

of its signing. The state's participation in the treaty was not dependent on the simple fact of agreement or disagreement of other states with a reservation. The objectives of the pan-American system included the fact to allow the greatest possible number of states to participate in the treaty.⁵ At the UN such position was viewed as appropriate for a regional organization, the number of participants in which was geographically restricted. At the same time, it was considered unacceptable to the UN itself because many of the instruments adopted within its framework were universal in nature.⁶

However, after World War II the international organizations were created, the process of decolonization begins, subsequently, inevitably having led to the emergence of new subjects in international relations, the world was polarized. These processes have led to the fact that to obtain the consent of all parties of the treaty became more and more complex and there occurred the necessity to change the regime of reservations into more flexible one.

Finally, the states felt it appropriate to seek the advisory opinion from the International Court of Justice on the issue of reservations to the Convention on Prevention and Punishment of the Crime of Genocide. A number of questions was raised in the Court:

firstly, can a state be considered a party of the treaty if its reservation was objected to by other participants;

secondly, what are the implications of objections to a reservation of several parties of the treaty.

The conclusion of the International Court of Justice 1951 regarding the case concerning reservations to the above Convention laid the “first stone” in the

³Francesco Parisi and Catherine Sevcenko. Treaty reservations and the economics of the article 21(1) of the Vienna Convention. - P. I.

⁴Fenwick C. G. Reservations to multilateral treaties //The American Journal of International Law. Vol. 45. Washington DC, 1951. - p. 145 - 146.

⁵ Kolesnik V.V. Reservations to international treaties: Extended abstract of dissertation ... Candidate of Juridical Sciences – M.: MSIR of the MFR of the Russian Federation, 2001; Kolesnik V.V. Codification of rules about reservation to international treaties // International public and private law. – M.: Lawyer, 2002. – No.3. – p. 27-35.

⁶ ibidem

foundation of the contemporary regime of reservations.⁷

The criterion of compatibility identified in the advisory opinion of the International Court of Justice argued that the reservation did not like one another. They can be classified, and each time before making a decision on the acceptance of a reservation or objection, it is necessary to identify the consequences to which it may lead.

On January 12, 1952 epy resolution of the UN General Assembly was adopted, according to which the General Assembly requested the UN Secretary-General in carrying out the functions of Depositary of international treaties, as the chief officer of the organization (article 97 of the UN Charter) to align its practices with the Advisory opinion of the ICJ dated May 1951 relating to the Convention on Prevention and Punishment of the Crime of Genocide (1948).

A turning point came in 1951, when the question of reservations was raised once again by the UN General Assembly before the UN International Law Commission, to which the reservations institution owes its codification. Initially, **the special rapporteur of the UN International Law Commission James Brierly** expressed the view, contrary to the Advisory opinion of the ICJ on reservations to the the Convention on Prevention and Punishment of the Crime of Genocide, adhering to the old position of acceptance of reservations by all parties. However, the first report of the special rapporteur of the Commission Humphrey Waldock contributed to the adoption of a more flexible system based on the experience of Latin American States.⁸

Temporary parameters of appeals of the General Assembly to the Secretary-General on the stated problems had extended its action to

the future as well, starting from the date of adoption of the indicated resolution, i.e., after January 12, 1952. Exactly it was about the following. In the framework of conventions concluded under the auspices of the UN the Secretary-General, as appointed Depositary, was intended to carry out its Depositary functions without entering into the essence of the question on the legal effect of international legal acts containing the reservation. The states as sovereign subjects of international law ought themselves through their free will to decide the question of acceptance of or objection to reservations.

The consolidated position of the United Nations on the outlined problems was reaffirmed in General Assembly resolution of 1959: the Directive marked in the resolution had extended its action to all treaties concluded under the auspices of the UN. Subsequently the Vienna Convention on the law of treaties developed in the framework of the UN International Law Commission the 1969, had fixed, in the text the article 20 of the document on the principle of compatibility as the optimal way to resolve the issue on reservations.

Thus, the reservations to the international treaties appeared based on the needs of the international community. They retain the dynamism of international treaties, greatly facilitate their conclusion and ensure the participation of a wide range of states. Despite its short history of existence, the reservations institution has undergone significant changes due to the change of approaches in the legal regulation - the transition from the traditional principle of unanimity on the issue of reservations in the framework of the League of Nations to the liberal regime, embodied in the Vienna Convention on the law of treaties 1969. The development of the reservations institution was not terminated after the adoption of the Vienna Convention of 1969. There are issues that have gained urgency in the modern stage. It is necessary to answer them based on the rules enshrined in the Vienna conventions.

⁷Lukashuk I.I. Contemporary law of international treaties. In II volumes. Volume I. Conclusion of international treaties. M.: Wolters Kluwer, 2004. - p. 439.

⁸Yearbook of the International Law Commission. 1997. Volume 2. Part 2. Report of General Assembly Committee on the work of its forty ninth session. New York and Geneva: UNO, 2004. - p. 50.



When appropriate, these rules can be amended and expanded considering today's realities.⁹

In conclusion, it can be noted that the consideration of the issue on reservations to international treaties in the foreign policy practices of the Republic of Uzbekistan has the important practical significance. Knowing theoretical bases of the provisions on reservations to international treaties and its regulation is necessary in the conclusion and implementation of the various international treaties, agreements and conventions. The study of treaty practice of the Republic of Uzbekistan shall contribute to the development of a correct international legal position meeting the national interests of our republic in the expression of reservations and the statement of objections against them.

⁹ Kolesnik V.V. Reservations to international treaties: Extended abstract of dissertation ... Candidate of Juridical Sciences – M.: MSIR of the MFR of the Russian Federation, 2001; Kolesnik V.V. Codification of rules about reservation to international treaties // International public and private law. – M.: Lawyer, 2002. – No.3. – p. 27-35.