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SECTION 32. Jurisprudence.

RESERVATIONS TO TREATIES: THE EMERGENCE, THE PROGRESSIVE DEVELOPMENT AND IMPORTANCE IN THE MODERN PERIOD

Abstract: The article is devoted to formation and development of the rights of States to reservations to international treaties in international law. The author notes that the institution of reservations was formed in parallel with the development of modern international law. But it is still early to talk about the final design of the institution of reservations - this institution continues to evolve. The author notes that the regime of reservations and other unilateral statements of participants settled enough detail. The author considers the reservation as a consensus decision of increasing the universality of international treaties.

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

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Introduction

The world practice shows that at the conclusion of multilateral treaties interests of subjects of international law do not always coincide, and therefore the right to declare the reservation is an important tool for their support.

Today reservations are applied in practice quite widely. However, the institution of reservations is a relatively new element in the system of international law. It was formed in parallel with the development of modern international law [1-2] and has gained widespread in the treaty practice of States only at the beginning of the XX century. Its prosperity is related to the increasing role of the international treaty as a whole and the increasing number of multilateral treaties [2].

Materials and Methods

Before World Wars approach to reservations was determined by the principle of unity: reservations to treaties required a unanimous decision by all participants. State - party to a treaty could not unilaterally make the decision to derogate from the terms of the contract.

At the same time, in parallel to the existing regional system adopted in the Pan American Union, the unanimity principle has not been applied. The Pan-American system has been a departure from the classical model. It has established a procedure of individual acceptance of a reservation to a treaty. Each state recognized the right to determine what the consequences will be considered a reservation for the commitments contained in the agreement at the time of its signing. State participation in the agreement did not depend on the mere fact of agreement or disagreement with the reservation of other states. The objectives of the Pan-American system was to allow the greatest possible number of states take part in the agreement [1-2].

After the Second World War, the state considered it appropriate to ask for an advisory opinion in the International Court of Justice on reservations to the Genocide Convention. The conclusion of the International Court of Justice in 1951 in the case of reservations to the said Convention has laid the "first stone" in the foundation of the modern regime of reservations [3].

The turning point was 1951, when the question of reservations was raised again by the UN General



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Assembly before the UN International Law Commission. To date, the Commission's Special Rapporteur made six reports on the topic "Reservations to treaties".

Today we can assert the existence of the existing mechanism of its international legal regulation, including rules as the contract and customary nature governing the procedure for the application and adoption of States and international organizations reservations to various instruments.

The basis of this legal regime consists of three universal conventions:

1. the Vienna Convention on the Law of Treaties 1969;
2. the Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986;
3. the Vienna Convention on Succession of States in respect of contracts in 1978 for these three conventions characteristic of a common approach to the regulation of questions of reservations, and this situation is not surprising.

The Conventions mentioned above regulate issues statements and making reservations and reinforce the overall system for regulating reservations, known as the "Vienna regime". The provisions of these Conventions are the result of a long evolution in contract law, aimed at maximizing the participation of States in multilateral treaties, while maintaining the object and purpose of these agreements [4].

The Vienna Convention on the Law of Treaties in 1969 was the first universal international agreement governing the institution of reservations to treaties. It establishes a flexible system of reservations, as opposed to the principle of unanimity, applicable to it in the framework of the League of Nations [5].

The "Vienna regime" provides a flexible regulation of the institution of reservations, which is due to:

- 1) the sovereign right of States to declare reservations and objections against them, and to determine the effects of the objection;
- 2) the adoption of such an objective criterion for formulating reservations as their compatibility with the object and purpose of the treaty;
- 3) dispositive norm of reservations (Article 19 -. 23) enshrined in the Vienna Convention of 1969, providing in each specific contract opportunity for States to set their own legal regime of reservations. This regulatory flexibility creates opportunities and conditions for widespread use of reservations to treaties for the protection of state interests [5].

The flexibility of the Vienna Convention regime is determined by introducing such a criterion of admissibility of reservations as their compatibility with the object and purpose of the treaty. Given the flexible nature of the Viennese system, it seems

inappropriate to make a change in the well-established definition of reservations to treaties. Despite some disagreement on certain aspects of it, we can say with confidence that on the definition of reservations in general there was a doctrinal consensus.

In addition, It should be noted that the Vienna reservations regime is universal. It applies to all international treaties, irrespective of their legal nature and object. The authors of the Vienna Convention sought to create a regime of reservations, which could be applied to all international treaties. Today, many contracts do not contain any articles devoted to reservations, since the participants prefer to be guided by the Vienna regime.

Nevertheless, it would however be wrong to assume that the regime of reservations and other unilateral statements of participants settled in sufficient detail. In particular, after the adoption of the Vienna Conventions there were significant doubts as to the legal regime of reservations. This is confirmed by the fuzzy, changing the practice of States and international organizations. The essential disadvantages of the Vienna Convention are, above all, uncertainty, vagueness, ambiguity of many of its provisions, causing differences in their interpretation and application. The problems mainly lie in the ambiguous understanding of the provisions of the Vienna Conventions and the lack of regulation of certain aspects of the legal regime of reservations. In this regard, it requires the development of specific rules on reservations in the Law of Treaties and further work on reservations to treaties.

The above-mentioned difficulties and shortcomings in the regulation of the Vienna Convention of reservations, as well as lack of coordination State practice determine the necessity of further research and development of reservations in modern international law.

The need for further improvement of the regime of reservations is determined by the importance of the institute of reservations in the modern period. Reservations to treaties were caused by 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 countries. In practice, a reservation gives the opportunity to become a party to the treaty states that accept the basic provisions of the contract, its object and purpose, but for various reasons can not agree with some, most, minor, parts of the contract. At the same time, the proper use of the reservations is an important resource in ensuring the protection of state interests [6]. On the other hand there is always a risk that the clause may reduce the effectiveness of the international treaty.

The issue is of practical importance for Uzbekistan as well. Today Uzbekistan has ratified a number of international agreements with a

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reservation. In particular, with reservations Uzbekistan ratified by the Republic of Uzbekistan United Nations Convention against Corruption, the Agreement on the Establishment of an International Fund for Agricultural Development (Rome, 13 June 1976), the Additional Protocol to the CRC, the Protocol to the UN Convention against Transnational Organized Crime on the Suppression and Punishment of the trafficking in persons, especially women and children.

Uzbekistan made reservations to some regional agreements. So, with reservations Uzbekistan acceded to the Treaty on CIS free trade zone agreement on cooperation of the CIS member states in combating illegal migration.

Uzbekistan ratified with a reservation agreement between the governments of states - members of the Shanghai Cooperation Organization (SCO) to combat the illicit trafficking in arms, ammunition and explosives. Uzbekistan, with reservations also ratified the SCO anti-terrorism convention. The reservations were made taking into account national interests of the country. On the one hand, Uzbekistan having ratified these treaties made a great step in the development of international

cooperation, on the other hand, it derived from its national interests.

Conclusion

In conclusion, it should be noted that in the Republic of Uzbekistan since the proclamation of state independence is an active process of formation of the national doctrine of international law of the Republic of Uzbekistan. Theory of reservations to treaties is a promising trend in the domestic international legal science, and therefore it does not have relevant scientific and theoretical development. Review of the problem of reservations to treaties in the foreign policy practice of the Republic of Uzbekistan is of great practical importance. Knowledge of the theoretical foundations of guidelines on reservations to treaties and its regulation is necessary for the conclusion and execution of various international treaties, agreements and conventions. The study of treaty practice of the Republic of Uzbekistan will contribute to a proper international legal position, corresponding to the national interests of our country while expressing reservations and a statement of objections against them.

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