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THE SCOPE OF RESERVATIONS TO INTERNATIONAL TREATIES

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ABSTRACT

Subject of reservations to international treaties is one of the important issues in the international community, because of its raised legal belonging to the States parties to the Treaty , and in their relations with contractual terms with each other , which results from this treaty exemption State which made a reservation to certain provisions of the treaty, and accept State or States and other participating compliance with certain provisions of the Treaty, the Convention has made it's in the Na Law of treaties of 19 69 to establish the definition of the reservation states that " A unilateral declaration that the state takes when signing, ratifying, acceding to or accepting the treaty with the aim of excluding or modifying the legal effect of some provisions of the treaty in confronting it . " The reservation may be in the form of exclusion that intends to exclude the legal effect of the provisions contained in the treaty in order not to implement it. the state of the reservation, in addition to the presence of the second type of reservation called the interpretative reservation, which aim to give the texts that have been impounded in certain in order to apply to the State which made a reservation, or that being applied to the text by the interpretation seen , which is not inconsistent with the values The principles of the legal state demanded the reservation . It should be noted that the agreement in the yen to the Law of treaties of 1969 had indicated to how to formulate a reservation, as was Article 23 of the above - mentioned

Convention procedures relating to the reservation, and these procedures should be expressed reservations and explicit acceptance, as well as Objection to it in writing and not orally and is sent to other parties who will be members of the treaty, as required by the agreement if the reservation is made at the time of signing the treaty subject to ratification Or acceptance or approval, the reserving state must formally prove it upon expressing its consent to abide by the treaty, and in such a case the reservation shall be deemed to have been made from the date of its confirmation .

Introduction

Research importance:The study of the subject of reservations to international treaties is the importance of large among international jurists, and the accompanying complex legal dilemmas and the resulting from the country's relations with the reserving States parties and other in the treaty has raised legal consequences of the reservation in that relationship, and the statement of whether the goal The reservation is in accordance with the purposes of the treaty or not.

Research Problem: revolve problematic research in determining the scope or extent of the right to express reservations to international treaties, as a reservation is a declaration by one of the parties to the treaty in the h of his signature and approval or acceptance of the exclusion of a particular provision in the treaty and the effect on the State which expressed reservation. As well as the answer to the question: What are the legal implications of reservations? And what is the nature of the relationship between the State and the reservation of States parties and other in the treaty and that was fabricated on the reservation or not you agree? And then stand on the extent of agreement or violation of the reservation for Treaty objects and the objectives that were requested.

The study methodology: we follow in our study of the descriptive analytical approach when the statement of the problems raised by the subject of reservations to international treaties, basing it on what came by agreement in the Lena and data for the year 1969 from the appropriate solutions to those problems, which dealt with a lot of Relevant legal and jurisprudential matters.

Literature review

1. The concept of reservations within the scope of international law

The issue of reservation to international treaties is one of the important matters in the international community, as it has effects related to international parties in the treaty through the contractual relationship between them, which may lead to the exemption of the state that has reserved, after the approval of the state or other states organizing that treaty from being bound by some The texts contained therein or tightened. The reservation in international law is embodied in that it is an official procedure carried out by a state, whether by signature, ratification or accession, and certain conditions must be met for this state to be accepted into the treaty (Ibrahim, 1986) , and the importance of reservation is in expanding the scope of the treaty in order to contain many From different ideological countries , and from these reservations that Turkey

and Iran practiced when signing the Geneva Convention Concerning the Sick and Wounded of War of 1906, in which the Red Cross was replaced by the Red Crescent. (Essam, 2010)

1. Definition of reservations

At first glance, the issue of reservations to international treaties is very clear and simple, but the definition of reservations is shrouded in many complex dilemmas, as international treaties do not include definitions of the terms that they contain. Therefore, the Vienna Treaty on the Law of Treaties of 1969 came with a definition that is clear after that it transcended tradition and ambiguity. Therefore, Article Two, Paragraph (D) of the aforementioned convention stipulated that “a unilateral declaration, whatever its wording or designation, is issued by a state or international organization upon its signature, official confirmation, acceptance or accession to the treaty (Abdul Karim, 2009), and it aims to exclude or amend the legal effect of some provisions of the treaty in the event that they are applied to that state or organization. Consistent with this, it has rolled on the Antiques, and these definitions are stated in the Harvard project on international treaties, as defined reservation that “an official statement specialization whereby a State when signing the treaty or ratification of or accession to certain provisions limiting the impact of the Treaty In relation to that state with the state or with other states party to the treaty.” (Muhammad, 2000) A reservation was also defined in accordance with the Iraqi Treaty Contract Law as “a declaration by the government of Iraq issued upon signing, ratification, accession, acceptance or approval of a multilateral treaty aimed at excluding or changing the legal effect of some provisions of the treaty in Its application to the Republic of Iraq within the limits permitted in that treaty. It is clear from the above-mentioned definitions that the Iraqi treaty law has gone to the treaty statement, which is the agreement of two or more wills, provided that these wills are embodied in writing between the two parties or between any international organization or any person of international people law, a condition that is recognized by the Republic of Iraq, and therefore, the purpose of that treaty events triggering a legal involving under international law provisions. therefore, in the reservation is a declaration of intending through which the state to modify or exclude the impact The legal effect of some provisions in the international treaty, and on this any declaration issued by the state that aims to exclude or amend the legal effects of some provisions in the provisions of the treaty constitutes a reservation, and that the direct effects of the reservation are the abolition of the legal provision contained in some of the provisions of the Treaty, which the Net c him to make this a non - valid ruling direction of the state or the organization a chart to him, or make it effective in accordance with certain conditions were not included in the treaty (Jamal, 2005), which means putting the state shown in A legal position different from the rest of the contracting states, which agreed to all the provisions stipulated in the treaty without conditions. Paragraph 3 of Article 27 of the Vienna Convention on Diplomatic Relations of 1961 stipulated that “the diplomatic bag shall not be opened,” and the Kingdom of Saudi Arabia has joined these institutes. Saudi Arabia and Bahrain, where these two countries have the feeling that the bag diplomacy may harm used in explosives smuggling weapons, drugs and materials and other banned internationally, so stipulated that these two

countries to join the treaty reservation that would allow them to open the diplomatic pouch, in the case of feeling competent authorities. The necessity of opening that diplomatic bag that may conceal with it some materials that are prohibited from import or export, and thus this reservation stripped the diplomatic bag of the immunity it enjoys. However, no state can be considered a declaration issued by a reservation if you were a non - that exclude or modify the effect of the legal some provisions of the Treaty, and therefore cannot evade obey to Clinch own reservations under the pretext that the m of it issued constitutes a declaration of interpretative rather than a reservation. Some provisions of the treaty. Here, it is necessary to distinguish between declarations and reservations made by the state upon the conclusion of the treaty, and it may be possible in some cases, but it is very difficult to be able to distinguish in other cases, due to the presence of many different types of declarations that do not all seek to change or amend some provisions in international Treaty, in some cases, the state is working and through the declaration to express its general policy or its point of view, in addition to the existence of the Declaration would recognize the party to the treaty or non - recognition, as well as the existence of declarations of the explanatory texts of the international Treaty. In line with this, there opinion is a declaration interpretative form of problematic reservation, while we find the opinion of another is not a declaration carries the meaning of the reservation, so the owners of opinion which does not differentiate between the declaration interpretative reservation, where they find that the meaning of the Declaration interpretative includes the reservation, has been known David Hunter Miller reservation that he " is a declaration that includes the addition or exclusion, modification, adaptation or interpretation or interpretation of the provisions of certain of the Treaty (Ghani, 1968), but some scholars have gone to the contrary view that does not include declarations of interpretative, and therefore known jurist Francis Wilcox. The reservation is " a formal declaration made by a state upon its acceptance of the treaty in general, and its purpose is to exclude from its acceptance of certain provisions, or to amend them, because it does not wish to abide by them ." In addition to the opinion, which was brought by the International Law Commission 's decision and worked by the Vienna Convention on the law of international treaties, which is the only purpose for which you want is the state, which was issued by the declaration, if the goal of the state exclude or modify the effect of the legal section of the provisions of the Treaty on that State direction. Its relations with other countries in the same treaty, in this case the declaration is a reservation, and if the declaration does not aim to do so, it does not constitute a reservation, and the rules governing reservations do not apply to it. In fact, the distinction between the reservation and declarations of interpretative by a State, it may be in sight first possible in theory, but it is a difficult practice, which makes a distinction between them very difficult, so it paid the International Law Commission's attention great in the issue of declarations of interpretative, and the decisions of reactions acts from countries other direction. That is why the guideline No. (2.9.4) on what can get from the responses of actions on the issue of declarations explanatory, so stated that " each Contracting State and an international organization may be contracting, and each State or an international organization to become a party to the accept the declaration of an interpretative or oppose it, or re - tack at any time ", as the Commission knew

all the standard adopted by States or international organizations about the explanation given by the State or some treaty, and therefore either get the approval of interpretation, intended to approve the declaration interpretative that " declaration unilaterally made by a State or in response to an international organization on the declaration expository drafted by the State or an international organization other expresses through which shouted it from the agreement with the proposed interpretation in this declaration. We conclude from the foregoing that the declaration interpretative which is not intending to state Through it, the exclusion or amendment of some provisions of the treaty does not constitute a reservation, and therefore it is not subject to the rules governing reservations, and it does not need the acceptance of other parties to the treaty, but if the goal of the interpretative declaration is to achieve the same effect of reservations as excluding or amending to some Tighten pain A treaty, in which case it is subject to the same rules governing reservations.

2. The importance of reservations to international treaties

It is well known that international law does not constitute an end in itself. Rather, it is a method whose aim is to organize a society or an international group according to its values and beliefs at a certain time. Therefore, reservation plays a fundamental role in order to protect these values of the group or some of it. a role no matter what your overall level, for the private level reservation is playing a role a key goal for the state, and examples, the reservation states of the Islamic, which may interfere with public order in those countries with a secular law, which is based on the principle of equality between people of men Women are alike, and who all have equal rights and duties despite the difference in their religions, beliefs, or colors, either at the present time, the conclusion of treaties is through international conferences or through international organizations, and some of the texts contained in those treaties may be in violation. For Islamic law, an example of this is if the treaty provides for equal inheritance provisions between men and women, and this is inconsistent with the provisions contained in the tolerant Islamic law. (Ali, 1997) either at the general level, the texts adoption contained in the International Treaty and by rule the majority when preparing those texts, it makes countries that opposed the vote on the treaty Imam of two things, the first that not to participate definitively in the treaty to the fact that some of the texts It contained therein are not those interests benefit states, either it second is those countries agree to accede to the Treaty and the reservation on some items that do not serve their interests, and under these circumstances must the law that is likely one of two things, either the idea of integration of the treaty, unity and note the lack of parties governing To it in the event that the reservation is not allowed, and the other matter is to allow a large number of countries to join it and give them the right to start the reservation, and this is what makes the wide participation in treaties, so the international community believes that despite the disadvantages of the reservation, the recognition of its permissibility is the best solution to achieve a collective idea The treaty. (Ali, 1997) In line with this, most countries have the desire not to adhere to certain provisions or make amendments to them, and are therefore of through the clear and explicit in the text of the treaty (Ghani, 1968) or, resorting to the agreement between the contracting states, (Charles, 1999) or going to make a reservation. It is worth noting that most international law

jurists believe that reservation to international treaties is becoming more and more important at the present time, and that the international community needs to adopt and apply it, due to the increase in organizing countries and participation in treaties, as contemporary international work has witnessed many multilateral agreements. , which joined to many different countries in their systems of political and economic, which makes reservations on the way the treaties allow States to accede to those treaties, which discordance some tightened , allowing those countries to express reservations on this Clinch , and thus states can agree to overcome the dilemmas faced by international action, and therefore allow the formulation of a reservation that is not incompatible with the object of the treaty and its objectives , which makes the treaty that are universal, especially treaties that provide for the provisions of relating to the international community, as well as the accession countries do not agree on some tightening Treaty it is better than totally excluded from the accession to the Treaty, and this is what makes the reservation is an expression of state sovereignty and freedom to regulate international relations Of . In line with this, the different systems of government in countries, as the body concerned with signing the convention differs from the one competent to ratify that convention, as the state discovers upon ratification of the convention through its certification body, that some texts cannot accept it, which is why It assists the state by making a reservation upon ratification of these texts , and thus it is able to get rid of the provisions that it does not agree to, and therefore the state is a party to this agreement . Therefore, reservations played a prominent role in the conclusion of treaties T. multiple parties , as it emerged the importance of reservations since 1945 in the formulation of reservations to ensure put into the treaty implementation, either at the present time, states have the freedom to express reservations to Clinch by the treaties, including reservations s a were made by States Asian and African colonial conditions , (Abdul Ghani, 1968) and an example, the accession of Algeria to the Convention on the fight against genocide of humanity, which expressed its non - acceptance of Article 12 of the Convention, which considered all received from the provisions of the Convention shall apply On the territories that do not enjoy self-rule, while Indonesia has made a reservation similar to the Unified Convention on Narcotic Drugs of 1961. In addition to what the International Court of Justice went on regarding the prevention of the aforementioned crime of genocide, which stipulated that “there is nothing to prevent the state from being considered the conservative. a party to the Convention as long as the reservation is not incompatible with the object of the Convention and its objectives (Mustafa, 1984), also announced that the Union of the Soviet upon ratification of the Convention in the yen on diplomatic relations of 1961 , must be taken into wit Tabar to discrimination articles (48 and 50) of the Convention, which the light of them from the provisions of special exclusion of many countries from entering into the Convention, and where the agreement goes to address many of the interests of States, so it was due to be agreement open imam states Jamie p her and allow her to join , and therefore can be considered this declaration a reservation because it represents the desire of the reserving State does not constitute an obligation for States and other approval . (Muhammad, 2000) In addition to what Latin American countries went to use reservations on the treaties that are organized to them to secure the protection of their sovereign rights, and among these countries is

Colombia, which expressed its reservation to the Geneva Convention on the territorial sea and adjacent areas in 1958, with regard to the passage of foreign warships through territorial waters. In addition to asylum countries to use the reservation to treaties in order to defend their economic, and these reservations are legitimate to Iran when it expressed its reservation to Article 4 of the Geneva Convention on the Continental Shelf, so the terms of the development of cable lines or pipes, or reservations on the continental shelf, the Republic of Egypt, Chile and other countries have also made reservations on the treaties related to the disputed territories, in addition to the use of states' reservations on the mandatory jurisdiction of the International Court of Justice. (Ghani, 1968) and following the example of the foregoing, the reservation is a working basis for the conclusion of international treaties in the modern era, and to allow the maximum number of countries to participate and join them, and make reservations to certain provisions of international treaties that are not compatible with their systems, legal or economic or social, as you see in those reservations to achieve their interests, and thus, the reservations have become of importance paramount in the conclusion of treaties, and thus what makes the international community involved in most of those treaties with multiple parties.

3. The effect of reservations on international treaties

Reservations to international treaties, the aim of which were a specific obligation contained in the treaties, and after the establishment of the League of Nations, work was carried out on a principle that would make the state reserving the treaty or some of its provisions could not be a party to it, since the stage after the establishment of the League of Nations (1920--1939) customary rule that was in place before the establishment of the League of Nations, where al-Qaeda is based on the acceptance of enough of the States parties to the reservation that posed by any country, as well as explicit text on the reservation to the treaty (Ibrahim, 1995), but that differed. After the signing of the Treaty of Vienna Convention on the Law of Treaties of 1969, the state has the right to reserve the treaty in all its details or some of its texts. After that we divide this section into two demands we will discuss in the first requirement of reservations raised in the previous stages of the Convention on the Law of Treaties, and we'll talk about the second demand from the perspective of the reservations raised in the Convention on the Law of Treaties, and Allen H and follows:

He raised reservations in the previous stages of the Treaty Law. Settled the traditional even after the founding stage of the League of the United Nations, that the state cannot be a party to the treaty, except in the case of consent to all the obligations stipulated in the treaty, and therefore the state if they have the desire to make any reservation to some of the provisions of the Treaty, in this situation cannot have to be a party to that treaty only if the reservation was formulated expressly provided for in the treaty in question, and should the sacrifice of this reservation with the consent of all States parties to the Treaty, and otherwise the state cannot be a party to the treaty. The embodiment of this traditional position came expert codification report progressive international law accredited to the League of Nations in the 17/6/1927, which does not allow the state to start its reservation unless it was approved that reservation of all

States parties to those, this is called acceptance Or collective consent with reservations (Muhammad, 2007) . In line with this, the traditional finds that the Treaty is only a decade, also finds that the reservation constitutes an offer to negotiate, and therefore must be accepted by States parties and other, and otherwise the refuse of the reserving State to be a party, starts out as the traditional jurisprudence keen on The unity and integrity of the treaty and respect for international sovereignty. From the point of view of the traditionalists, the treaty is nothing but an expression of the will of states, and therefore it is not possible to make reservations without the consent of the state's parties. It should be noted to the treaty after it became adopted by a majority of two - thirds, and Hana began the need for reservations to certain provisions of the treaty, so the position of traditional narrow , which prevents the expansion of the parties to the treaty to take back down after the United Nations to establish , especially after the International Court of Justice refused to accept him in opinion Advisory issued by the court mentioned above on reservations to the Convention on the Prevention of genocide and collective for the year 1951 so formed the agreement referred to above and venerated by the General Assembly of the United nations in 12/09/1948 the decision 260/2 shop for many of the reservations made by the Eastern European countries At that time, Article (9) related to the mandatory jurisdiction of the International Court of Justice to adjudicate disputes that arise from the interpretation and application of the treaty, in addition to the application of Article (12) regarding the non-application of the agreement to regions that do not enjoy self-rule . (Muhammad, 2000) Opinions differed as to whether reservations may be made or not, because the aforementioned agreement does not include a text that allows or does not allow reservations , especially if it has a view that the reservation constitutes a right of sovereignty, and therefore it can be initiated in all types treaties, and this has been met with opposition from some countries to be the E reservations by the socialist countries and in Here the Soviet Union, and in the light mal of the General Assembly of the United nations addressed to the hinted international punch , which issued a majority advisory opinion on 28/5 / 1951, which was contrary to what was established in traditional jurisprudence . In line with the stated above, the International Court confirmed the principle of inadmissibility of reservations even in the absence of special provisions in the Convention permit the reservation, provided that the reservation is compatible with the object and purpose of them, and therefore state that made a reservation and was approved by the parties and other become a party to the Treaty Otherwise, the state cannot be a party to the treaty. (Mohammed , 2000) and see the foregoing that the owners of traditional thought was radical yen on the need for unity of the Treaty, and therefore may make a reservation by some States parties to the Treaty on certain provisions of the Treaty, as representing the sovereignty of States parties , except in one case is the presence of An explicit text in the treaty permitting the reservation and the acceptance of that reservation by other states, but the situation has changed after the emergence and establishment of the United Nations, as it did not follow the traditional thought approach and followed a completely different path, as some state parties are authorized to make a reservation, provided that it is consistent and agreeable. With the goals and purposes of the Treaty, and therefore, the State which expressed reservation is a party to the treaty.

4. Reservations raised in the light of the Convention on Law of Treaties

That reservations in the perspective of a treaty in the Na Law of Treaties, based on the Clinch contained in articles (19-23) , as it makes the expansion of the idea of accession to the treaty the largest possible number of states, and that some countries did not agree on some of Clinch Dah to the Treaty, and lack of commitment to those Clinch, the so no leads to the denial of accession to the treaty, despite the encouragement of the treaty states to join them , but she did not go to sacrifice in the unity of the treaty and the lack of indivisibility. In fact, the reservation is a manifestation of sovereignty, and therefore, the freedom of Ta Bear for ultimate satisfaction of the commitment of the Clinch laid down in the Treaty, does not preclude States parties that refrain from approving some Clinch that do not wish to abide by them, but the methods of contemporary played a major role on holiday reservations, which led to abandon the idea of consensus and asylum to accept the idea of the majority , it which scans the reserving State to be a party to the treaty rather than exclusion (Mohammed , 2000) , where applicable principle in the light of the provisions of the reservation to the Convention, It is to allow states to make reservations on some provisions of the treaty upon signature, acceptance, approval or accession under Article 19/1 , and this means that the reserving state enjoys absolute freedom to make its reservation . It should be noted that states are, in principle, free to make a reservation or not, but this freedom is not absolute, if reservations come from a large number of states parties , or if they are many, then in this case they do not achieve the purpose of the treaty, in addition to the emergence of dilemmas. It has a complex legal framework among the states parties, so Article (19) of the convention came to refer to some exceptions to the general principle, and therefore states cannot initiate the reservation in the following cases: 1- If the reservation is prohibited in the treaty according to Article (19 / a) of the agreement. 2- If the reservation is not among the reservations authorized by Article (19 / b). In some cases, the treaty explicitly prohibits reservations on some provisions of the treaty, and this means that reservations may be made to other provisions. 3- The silence of the treaty with regard to making reservations, and here it is permissible to make a reservation, provided that it is consistent and compatible with the objectives of the treaty. In line with this, in the event that there is a provision in the treaty preventing reservations to it, Professor Rosen considers (ROZINE) That " there is no provision in the treaty prevents express reservation on them, shows that the parties contracting wanted to confer such jus on the rules laid down by the treaty, and on the contrary, if allowed agreement reservations even for any item of them, this is a candidate to say that it does not include jus cogens. (Alaa, 2008) and conclude from the foregoing that the general reservations to certain provisions of the treaty authorized the reservation to be in agreement with the purposes and objectives of the Treaty, and to the following if it showed a state reservation to some of the provisions contained in the treaty, does not deprive them of being a party to that treaty, and aim to expand the circle of accession to international treaties , but there are some exceptions reported by the Convention and provided for in Article 19 of them, so we see that reservations to certain provisions of treaties under the Convention in the Na Law of treaties encouraged Participation in treaties after he has authorized reservations, provided that they do not conflict with the object and objectives of the treaty .

Conclusions

It has manifested itself through the study, the statement of scale relative right of reservations to international treaties stage before the Convention in the Na law data for the year 1969, as well as in the shade, and reached the international community at the present time, and the effects of the legal implications on reservations, and the position of the States parties in The treaty from the reserving state. In light of this, we reached conclusions and put the necessary proposals in light of them, as follows:

- 1- States may participate in treaties express reservation to some tightened , for the purpose of dissemination of treaties and the application of convergence among States, as the international community found it better to make a reservation even though there are some disadvantages in it .
- 2- The reservation may be at the signing of the treaty is the best of what is characterized by the removal of an element of surprise for the parties to the others and stand on the exact details of the treaty and reservations that may be put on them, and thus dealing on their light .
- 3- The reservation to bilateral treaties cannot be only in the two phases of the signing of the Treaty, or ratification, and in this case , the reservation as a new offer to the other party, which may accept the treaty with reservations or reject it , and therefore not be held bilateral treaty .
- 4- As for collective treaties, reservations may be made when signing, ratifying, or acceding to the treaty. Therefore, the reservation is acceptable and legitimate as long as it does not conflict with the goals and objectives of the treaty.
- 5- That the text should be written on the reservation in treaties and in accordance with the provisions of the treaty ratified by the rules and in the absence of the text on the reservation in the treaty so they can be to return to the agreement in the Na Law of Treaties as the original.

Proposals

- 1- Work to prevent reservations to international multilateral treaties that dwarf the idea of integrity and unity of the treaty.
- 2- Restrict the right to express reservations to international treaties in the process of accession being comes time inappropriate and bad which occurs after the treaty has entered into force between the States Parties .
- 3- The necessity of specifying the conditions for accepting or not a reservation in international multilateral treaties, in order to avoid the problems that might arise .
- 4- For the United Nations General Assembly or the Security Council to form special committees to work on assessing the effects resulting from reservations on international treaties, by linking these effects to the extent of their positive or negative impact on international stability and the preservation of international peace and

security, and thus the establishment of the General Assembly or The Security Council prohibits or rejects reservations that have a negative impact or that pose a threat to world peace .

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