RESERVATIONS TO CIS AGREEMENTS


Advisory Opinion on Reservations to Certain Commonwealth of Independent States Agreements

Commonwealth of Independent States, Economic Court. 15 May 1996

(Tolibov, Acting Chairman)

Summary: The facts:—The Inter-State Economic Committee of the Economic Union requested an advisory legal opinion as to whether certain agreements adopted within the framework of the Commonwealth to which reservations had been made conformed with the Vienna Convention on the Law of Treaties, 1969 ("Vienna Convention"). The Court analysed such international legal documents adopted between 1991 and 1995.

Held:—(1) Reservations, used most frequently by Ukraine, the Republic of Moldova and the Republic of Azerbaijan, were made in relation to decisions adopted by the Council of the Heads of Governments and to multilateral agreements adopted within the framework of the Commonwealth (p. 3).

(2) Both agreements and decisions to which reservations were made could be classified according to their constitutive, economic or political characters or with regard to social, special or humanitarian questions (pp. 3-7).

(3) On the basis of Article 31 of the Vienna Convention, decisions of heads of States and governments which approved draft agreements and annexes thereto and those which instituted organs provided for by international agreements, statements of heads of States and governments if they were an annexe to a treaty, and memorandums and declarations of heads of States and governments if they had the respective attributes of international agreements, could be classified as international agreements and were thus in conformity

1 Article 31 of the Vienna Convention provided that: "... (2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty..."
with the Vienna Convention. Decisions of organs of the Commonwealth affect- ing budgetary questions and statutes on the personnel of organizations or establish- ing auxiliary organs of organizations were, however, the internal law of international organizations (pp. 7-8).

(4) Reservations to a number of agreements were invalid because a State failed officially to confirm the reservation when expressing its consent to be bound by the treaty as required by Article 23(2) of the Vienna Convention (pp. 8-9).2

(5) Some reservations violated the procedural and material norms of the Vienna Convention. Procedural violations occurred in the form of declaration, for example, illegibility. Material violations manifested in reservations that (a) were formulated as a demand concerning a change of, addition to, or exclusion of all Articles addressed to all parties to the treaty; (b) related to the entire treaty, being a condition of signature of the declaring State; (c) were incompatible with the object and purpose of the agreement; and (d) violated generally recognized principles and norms of international law. Failure to comply with these norms could not be explained by any inefficiency on the part of the depositary (pp. 9-12).

(6) Whereas most of the agreements analysed were open treaties, reservations to which did not require special acceptance by the States Parties as provided in Article 20 of the Vienna Convention, reservations to the few closed treaties did require acceptance by all States Parties. A reservation was considered accepted if no objection to it had been raised within a year (pp. 12-13).3

(7) While the Vienna Convention contained provisions regulating the legal consequences of lawful reservations, for example Article 21(1)(a), (b) and (3), there were no provisions regulating unlawful reservations (p. 13).

(8) It seemed logical that reservations violating procedural norms of the Vienna Convention should not be invalid. With respect to reservations violating material norms, States Parties had the option of objecting to the reservation thus depriving a State of the possibility of becoming a party to the treaty. In accordance with Article 23(4) of the Vienna Convention, States could remove objections or reservations at any time. In the absence of an objection, an unlawful reservation operated as a lawful reservation. Although this was permitted by international law on condition of State compliance, unlawful norms could not be referred to when settling disputes in international agencies (pp. 13-15).

2 Article 23(2) of the Vienna Convention provided that: “If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.”

3 Article 20(5) of the Vienna Convention provided that: “... a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.”
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The following is the text of the Advisory Opinion of the Court:

The Inter-State Economic Committee of the Economic Union has applied to the Economic Court of the Commonwealth of Independent States with a request to give a legal opinion on the conformity of certain agreements adopted within the framework of the Commonwealth to which reservations have been made to the provisions of the 1969 Vienna Convention on the Law of Treaties.

The Economic Court has analysed the international legal documents adopted within the framework of the Commonwealth during 1991-5 to which reservations were made by states on the subject of their conformity to the Vienna Convention and offers the following opinion.

Reservations were used most frequently by Ukraine, the Republic of Moldova, and the Republic of Azerbaijan both when decisions were adopted by the Council of the Heads of Governments and also when signing and acceding to multilateral agreements concluded within the framework of the Commonwealth.

Agreements adopted within the framework of the Commonwealth, and also decisions and memorandums of the Heads of States and Governments to which reservations were made, may be classified by object into the following types:


of the Commonwealth of Independent States of 3 November 1995; and the Agreement on Conducting an Agreed Policy in the Domain of Transit of Natural Gas of 3 November 1995;


*Agreement with regard to special questions:* the Agreement on Joint Activity With Regard to Research and Use of Outer Space of 30 December 1991; the Agreement on Interaction in the Domain of Ecology and Protection of the Natural Environment of 8 February 1992; the Agreement on the Use of Airspace of 15 May 1992; the Agreement on Interaction in the Domain of the Prevention and Liquidation of the Consequences of Extraordinary Situations of a Natural and Technogenic Character of 22 January 1993; and the Agreement on Cooperation in the Domain of Veterinary Medicine of 12 March 1993;

*Agreements with regard to humanitarian questions:* the Agreement on Cooperation in the Domain of Information of 9 October 1992; the Agreement on Joint Activity With Regard to the Search for and Release

In accordance with the provisions of the Vienna Convention (Article 31) for the purposes of interpretation of a treaty there are used not only the text thereof, but also any agreement relevant to the treaty if it was reached between the participants of the treaty, and also any document drawn up by the participants of the treaty and accepted as a document relating to the treaty. Basing ourselves on these provisions, one may draw the conclusion that there shall be classified as international agreements:

decisions of the Heads of States and Governments;
approving draft agreements and annexes thereto (for example, the Decision of the Council of Heads of Governments of the Commonwealth on the draft Agreement on the Creation of the Inter-State Currency Committee of 26 May 1995);
founding organs provided for an international agreement (for example, the Decision of the Council of Heads of States of the Commonwealth on the Executive Secretariat of the Commonwealth of Independent States of 14 May 1993 with the appended Statute on the Executive Secretariat of the Commonwealth of Independent States);
statements of the Heads of States and Governments if they are an annex to a treaty (for example, the Statement of the Council of Heads of States-Participants of the CIS of 22 January 1993 as an Annex to the Charter of the Commonwealth of Independent States of 22 January 1993;
memorandums and declarations of Heads of States and Governments, if they have the respective attributes of international agreements (for example, the Memorandum on the Maintenance of Peace and Stability in the Commonwealth of Independent States of 10 February 1995).

Decisions of organs of the Commonwealth affecting budgetary questions and statutes on the personnel of organizations or establishing auxiliary organs of organizations are the internal law of international organizations.

In accordance with the Vienna Convention (Article 23(2)), a reservation made when signing a treaty subject to ratification must be officially confirmed by the State which made the reservation when expressing its consent to the obligatoriness of that treaty for it.

Being guided by the said norm, one should deem invalid reservations to a number of agreements by virtue of the absence on the part of States which made the reservation of the act of ratification required under the conditions of the said agreements. Among their number are the reservations of:


**Republic of Kyrgyzstan** to the Agreement on Mutual Recognition of the Rights and Regulation of Relations of Ownership of 9 October 1992;

**Ukraine** to the Agreement on Joint Measures Relating to the Prevention and Averting of Blockade of 24 September 1993; Agreement on the Creation of the Inter-State Eurasian Coal and Metal Association of 24 September 1993; the Treaty on Conducting an Agreed Anti-Monopoly Policy of 23 December 1993; the Agreement on Cooperation in the Domain of Investment Activity of 24 December 1993; the Agreement on the Accession of Ukraine to the Economic Union with the Rights of an Associate Member of 15 April 1994; the Constitutive Treaty on the Creation of the Fund for Assistance to the Republic of Tadzhikistan of 15 April 1994; the Agreement on Cooperation in the Domain of Mobilized Preparation of the Economy of 15 April 1994; and the Agreement on the Creation of the Inter-State Currency Committee of 26 May 1995;

**Republic of Azerbaijan** and **Ukraine** to the Convention on Ensuring the Rights of Persons Belonging to National Minorities of 21 October 1994; the Agreement on the Creation of Common

Violations of procedural norms of the Vienna Convention relative to reservations concern the forms of declaring reservations (for example, reservations of: the Republic of Kyrgyzstan—to the Agreement on Mutual Recognition of the Rights and Regulation of Relations of Ownership of 9 October 1992; Ukraine—to the Agreement on Joint Measures Relating to the Prevention and Averting of Blockade of 24 September 1993). Certain reservations were written illegibly and are difficult to read (for example, reservations of: Ukraine—to the Agreement on the Use of Airspace of 15 May 1992; Turkmenistan—to the Agreement on the Interaction of States-Participants of the Commonwealth in the Domain of Geodesy, Cartography, Cadastre, and Distance Probing of Earth of 9 October 1992).

Violations of material norms of the Vienna Convention relative to reservations are manifest in the following:

reservations are formulated as a demand concerning a change of, addition to, or exclusion of Articles addressed to all participants of the treaty. Illustrative in this respect is the dissenting opinion of the Republic of Belarus to the Agreement on the Creation of a Unified System of Air Defence of States-Participants of the Commonwealth of Independent States of 10 February 1995 containing the formulation: “Article 1: to add to the first paragraph . . . to set out paragraph two as follows . . . Article 2: to change paragraph one . . . Article 5: to remove paragraph one”; a reservation relating to the entire treaty, being a condition of signature thereof on the part of the State declaring the reservation. For example, the reservation of the Republic of Moldova to the Agreement on the Principles of Provision of the Armed Forces of States-Participants of the Commonwealth with Armaments, Technology, Material Means, and Organization of Production Activity of Repair Enterprises, Scientific
Research, and Experimental Construction Design Work of 14 February 1992 provides: “Questions set out in the present treaty the Republic [of] Moldova shall decide only on a bilateral basis”. The reservation of Ukraine to the Decision of the Council of Heads of Governments of the Commonwealth on the draft Agreement on the Creation of the Inter-State Currency Committee of 26 May 1995 provides that Ukraine “supports the creation of such a committee and will accede thereto after the introduction of a new national currency”;

reservations incompatible with the objects and purposes of the agreement. Such are reservations of the Republic of Kazakhstan and Republic of Uzbekistan to the Agreement on the Principles of Bringing Up to Strength the Border Forces of the Commonwealth and Undergoing Military Service Therein of 15 May 1992, consolidating that “the officers of the Border Forces of the Commonwealth shall be appointed to and relieved from their posts in accordance with legislation of the States-Participants of the Commonwealth”. This is contrary to Article 1 of the Agreement, according to which States-Participants are obliged to effectuate agreed measures directed towards ensuring a uniform procedure for the call-up, bringing up to strength, and undergoing of military service;

reservations violating generally-recognized principles and norms of international law. Such is the reservation of the Republic of Armenia to the Memorandum on the Maintenance of Peace and Stability in the Commonwealth of Independent States of 10 February 1995 excluding points 7 and 8 of the Memorandum obliging States to undertake measures with regard to the suppression of any manifestations of separatism, nationalism, chauvinism, and fascism, not support separatist movements, and not permit the use by them of territories and communications of States-Participants of the Commonwealth.

Incompatible with procedural and material norms of the Vienna Convention are those reservations of:

Republic of Moldova to the Statement of the Council of Heads of States-Participants of the CIS of 22 January 1993 (reservation contrary to object and purpose);