



Russian Federation: Extension of International Treaties and Legislative Reservations

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RUSSIAN FEDERATION

**EXTENSION OF INTERNATIONAL TREATIES
AND LEGISLATIVE RESERVATIONS**

Executive Summary

Treaty extensions are not regulated by the Federal Law on International Treaties of the Russian Federation. In most cases, an extension occurs automatically if a treaty provides for such an opportunity. If the conclusion of an additional protocol on extension is required, such a protocol may be the subject of ratification. Reservations to the treaty may be recommended by any party who has the constitutional right of legislative initiative but a consensus between the President, the government, and the legislature must be reached in order to include reservations in the ratification law. Political statements of each legislative chamber must be included in non-binding parliamentary resolutions. It appears that Russia avoids making reservations to bilateral international treaties.

I. Extension of International Treaties

The Federal Law of the Russian Federation on International Treaties of the Russian Federation (hereafter International Treaties Law),¹ which regulates all major aspects of legal issues associated with the negotiation, signing, legislative approval, entry into force, and implementation of international agreements to which Russia is a party, does not define the procedures for the extension of treaties and does not address this issue, thus allowing one to conclude that an extension of a treaty must occur according to a treaty's provisions as agreed by the parties.²

As a rule, the extension of a treaty takes place as the result of a special agreement (protocol) on extension, or by providing for automatic extension after the originally determined period of a treaty's validity expires. Russia often includes an automatic extension clause in its bilateral³ and multilateral⁴ treaties and rarely specifies how many times the automatic extension

¹ SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [SZ RF] [Collection of Russian Federation Legislation, official gazette] 1995, No. 29, Item 2757; SZ RF 2007, No. 49, Item 6079.

² IGOR LUKASHUK, DIPLOMATICHESKIE PREGOVORY I PRINIMAEMYE NA NIKH AKTY [DIPLOMATIC NEGOTIATIONS AND ADOPTED AGREEMENTS] 71 (Moscow, 2004).

³ E.g., The Military Cooperation Agreement Between Russia and Tajikistan (1997) provides for its automatic extension every three years unless one of the parties informs the other of its intention to terminate the Agreement six months before the expiration date. BIULLETEN MEZHDUNARODNYKH DOGOVOROV ROSSIISKOI FEDERATSII (official gazette of the RF international treaties) 2004, No. 10, at 58.

can occur.⁵ If there are no significant issues in bilateral relations and the treaty serves its purpose well, such automatic extensions may continue indefinitely, even if the extension period is short. For example, the Treaty on Trade and Seamanship between the Soviet Union and Norway was signed in 1925 for a three-year period, but remained in force in the 1960s.⁶

It appears that an extension does not require consent (additional ratification) from the constitutionally established authority if a treaty was properly ratified originally and an extension occurred before the expiration of the treaty's validity.⁷

A provision on extension of the U.S.-Russian Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (art. XIV (2)), which provides for the possibility of a single extension for a period not exceeding five years upon joint consideration and an appropriate decision of the parties, appears to be novel for Russian law on international treaties and it is not clear whether a new ratification will be required. It seems that a new ratification will not be needed if the decision on extension is made before the expiration (termination) of the Treaty because the once-ratified Treaty will continue to stay in force, and the extension mechanism is determined by the original Treaty, which received legislative consent during the original ratification process. As a rule, additional ratification is required when the original treaty does not provide for the extension, and an agreement to extend the treaty was made in the form of a separate protocol even during the period when the treaty was in force. In such cases, a separate protocol is ratified in the same way as the original treaty.⁸

II. Reservations Made During Ratification

In Russia, reservations to international treaties are made through the same procedure that applies to consent to such treaties.⁹ If the consent is given in the form of a law, then the

⁴ E.g., The Treaty on Economic Union of the CIS Member States of September 24, 1993, *available at* the CIS Executive Committee website, <http://www.cis.minsk.by/main.aspx?uid=334> (official publication) (last visited Sept. 14, 2010), states that it is concluded for a term of ten years with automatic extension for every subsequent five-year period.

⁵ In 2002, the Highest Court of the Russian Federation for Commercial Disputes (RF HCCD) ruled that an agreement must stay in force if it was not properly terminated and if it provides for the opportunity of automatic extension, where it does not mention the number of possible extensions and the first extension period defined by the treaty has been expired. Ruling of the Presidium of the RF HCCD No. 7103-101 of January 23, 2002, VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA ROSSIYSKOI FEDERATSII [Bulletin of the RF HCCD] (official publication) 2002, No. 3, at 12.

⁶ DOKUMENTY VNESHNEI POLITIKI SSSR [The USSR Foreign Policy Documents], 1963, v. 8, at 716.

⁷ LUKASHUK, *supra* note 2, at 74.

⁸ The Treaty on Collective Security of the CIS Member States of May 15, 1992, was “concluded for a five-year period with possible extension” (art. 11), but the extension mechanism was not defined by the Treaty. Because the treaty was supposed to expire on April 20, 1999, all parties to the Treaty signed an extension protocol on April 2, 1999, which stated that it would enter into force following an exchange of ratification instruments. In order to secure the continuity of the Treaty before formal ratification of the protocol by the parties, the protocol provided for temporary implementation of the Treaty. This protocol was ratified by the Federal Assembly of the Russian Federation and the ratification law was signed by the Russian Federation President. ROSSIYSKAIA GAZETA (government daily newspaper, official publication), Apr. 26, 2000.

⁹ International Treaties Law art. 25(1).

reservations stated by the legislature must be included in the Law on Ratification and stipulated in the instruments of ratification signed by the President of Russia. If the reservations are recommended by the authority that submits a treaty for consent to the legislature, they must be submitted together with the text of the treaty.¹⁰ All parties who have the right of legislative initiative under the Russian Constitution¹¹ can propose reservations to international treaties under legislative consideration. The procedure for suggesting and introducing reservations is defined by Article 16.5 of the Federal Law on International Treaties of the Russian Federation and requires the submission of proposed reservations, which the State Duma might consider including in the ratification bill, to the President of the Russian Federation for his review and approval. According to the established procedure, no reservation to an international treaty can be brought or initiated by a separate actor and requires the joint effort of all branches of government because if reservations are included in the text of the ratification law they are made in the name of the Russian Federation.¹²

Legislative statements regarding the ratification of an international treaty are not regulated by the Federal Law on International Treaties of the Russian Federation. According to Boris Osminin, who is one of Russia's leading scholars on international law, statements must be passed in the same way as reservations:

If a consent to the treaty is given in the form of a law, then parliamentary statements shall be included in the relevant law and then added to the ratification instruments signed by the President of Russia. Statements do not change the nation's obligations under the treaty and may contain political evaluation of the treaty or its specific provisions, or define how Russia will interpret or implement a particular provision of a treaty.¹³

In cases where the State Duma or the Federation Council want to make recommendations to the President or the government or express their position in regard to a treaty, there is no need to include such a statement in the ratification bill and make it a part of legislation. Russian scholars believe that in these cases it would be enough to include such a statement in the non-binding parliamentary resolution on approval of the ratification law.¹⁴

Based on a review of international agreements recently concluded by the Russian Federation, one may state that Russia's principal position is that reservations to bilateral treaties are not acceptable. Under its current policies, Russia attempts to avoid creating a precedent of

¹⁰ BORIS OSMININ, *ZAKLIUCHENIE I IMPLEMENTATSIYA MEZHDUNARODNYKH DOGOVOROV* [CONCLUSION AND IMPLEMENTATION OF INTERNATIONAL TREATIES] 146 (Moscow, Berlin, 2010) (in Russian).

¹¹ According to Article 104.1 of the Russian Constitution, the right of legislative initiative belongs to the President of the Russian Federation, individual members of both chambers of the Federal Assembly (legislature) of the Russian Federation, the Russian Federation government, and legislative bodies of Russia's constituent components. Russia's three highest courts have the right of legislative initiative on issues within their competence.

¹² OSMININ, *supra* note 10, at 146.

¹³ *Id.* at 151.

¹⁴ *Id.* at 152. See also, Igor Rachkov, *Odnostoronnie Akty Gosudarstv: Nekotorye Pravovye Voprosy* [Unilateral Acts of the States: Some Legal Aspects], *GOSUDARSTVO I PRAVO* [STATE AND LAW], 2001, No. 8, at 74 (in Russian).

adding reservations to bilateral treaties, instead aiming to resolve outstanding issues during the negotiation stage and hoping that other countries will behave reciprocally.¹⁵

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¹⁵ OSMININ, *supra* note 10, at 149.