China’s Practice in Treaty Reservations since 1949: Legal and Policy Evaluation

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Since its founding in 1949, the People’s Republic of China has acceded to more than 300 multilateral treaties. Among them, China made reservations to 83 treaties, accounting for nearly 27.7 percent of the total. Evidently, for China, formulating reservations to multilateral treaties is an issue of vital importance in the process of concluding and executing multilateral treaties. This paper examines the three main reasons why China inclines to formulate reservations to the treaties, then argues that the reservations formulated by China, whether in procedure or in substance, are not only in full conformity with the 1969 Vienna Convention on the Law of Treaties, but also full of Chinese characteristics. This paper also analyzes several specific reservations that China shall withdraw, and addresses the limitations of China’s existing treaty reservation system. Accordingly, this paper concludes that the Chinese government should improve and perfect its treaty reservation system with some suggestions.

Keywords
Reservations to Treaties, Multilateral Treaties, Vienna Convention on the Law of Treaties, China’s Practice
I. Introduction

Since its founding in 1949, the People’s Republic of China (“PRC”) has acceded to more than 300 multilateral treaties. Among them, it formulated reservations to 83 treaties, accounting for nearly 27.7 percent of the total. In addition, China made a series of reservations and declarations on July 1, 1997 when the United Kingdom transferred the sovereignty of Hong Kong back to China for the continuing application of 62 multilateral treaties in Hong Kong. Formulating reservations to treaties by China is an issue of vital importance in the process of the concluding and executing the treaties for nearly 70 years. In this context, it is not only essential to critically review the long-history of China’s practice in treaty reservation, but also worthwhile to identify the problems from the longstanding practice, and ultimately to improve and renovate the present treaty reservation system of China.

The primary purpose of this research is to improve and perfect the present treaty reservation system of China. This paper is composed of seven parts including an Introduction and Conclusion. Part two will review the main reason why China formulates the reservation to treaties. Part three will discuss procedural issues concerning China’s practice in reservation. Part four will examine China’s reservations to treaties. Part five will analyze two specific reservations that China should withdraw. Part six will suggest the renovations of treaty reservation system of China.

II. Why China Formulates Reservations to Treaties?: Three Main Reasons

There are three main reasons why China formulates reservations to the treaties. The first one is political reasons. China formulated a reservation to provisions concerning nuncios and the representative of the Holy See in Articles 14 and 16 of the 1961

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1 Hereinafter referred to as ‘China.’
2 In this paper, the statistics of reservations to multilateral treaties of China are cited from the series of Treaty Compilations of the People’s Republic of China [中国人民共和国条约集] available only in Chinese. This series has been edited by the Department of Treaty and Law of the PRC Ministry of Foreign Affairs almost every year. Only those treaties with binding forces, acceded to by China could be selected into the Compilations. As of May 10, 2017, the 58th volume was published.
3 In this paper, “reservations to treaties” denote those reservations to multilateral treaties.