The Vienna Conventions on the Law of Treaties

A Commentary

VOLUME I

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1969 Vienna Convention[1]

Article 22
Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(*a*) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

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Pellet, A., Seventh Report, A/CN.4/526/Add.2, paras 61–184, Add.3, paras 185–221 (*YILC*, 2002, vol. II, Part One); and Eighth Report, A/CN.4/535, paras 33–68, Add.1, paras 69–106 (*YILC*, 2003, vol. II, Part One) on the withdrawal or modification of reservations and of interpretative declarations; and Eleventh Report on the withdrawal or modification of the objections (A/CN.4/574, *YILC*, 2006), and the corresponding reports of the ILC to the General Assembly:

[1] The present commentary is largely based on the Seventh, Eighth, and Eleventh Reports of the author as Special Rapporteur of the ILC on reservations to treaties, the references of which are included in the bibliography. These developments were largely endorsed by the Commission in the commentaries to guidelines 2.5.1 and 2.5.7–2.5.11 as adopted in 2003 (see Report of the ILC to the General Assembly, A/58/10, pp 190–201 and 226–59) on the withdrawal and modification of objections to reservations and to guidelines 2.71–2.7.9 as adopted in 2007 (see Report of the ILC to the General Assembly, A/63/10, pp 225–43).

respectively A/58/10 (2003), pp 189–258 and A/59/10 (2004), pp 269–80 (these reports are published in *YILC*, 2003 and 2004, vol. II, Part Two and, *YILC*, 2006 and 2007, vol. II, Part Two)

A. General characteristics

Origins, purpose, and objective: the notion of withdrawal of reservations and objections

1. Uncommon in the past,[2] the withdrawal of reservations is today a frequent phenomenon.[3] The heightened recourse to this possibility is due to the accession to independence of numerous States, leading them to review the reservations formulated by their predecessor States.[4] But it is also, and especially, due to changes in the political regimes of the East European States, which renounced a large number of reservations formulated during the communist era, notably in the field of human rights or submission of disputes to the International Court of Justice (ICJ).[5]

2. As a consequence of these events, there has been growing interest in the provisions of the Vienna Convention of 1969, two of the provisions of which concern directly the withdrawal of reservations and objections. In fact, in addition to Article 22, Article 23(4) concerns the form (necessarily in writing) that these acts must take.

3. For its part, Article 22 gives relatively precise indications concerning:

- the time of the withdrawal;
- the uselessness of acceptance by other parties; and
- the moment when the withdrawal becomes effective.

The Article is, however, silent on the question of the nature of the effects attached to the withdrawal. Moreover, Article 22, as many other provisions of the Convention, contains no definition of the term 'withdrawal'.

4. It follows from the requirement of written form, imposed by Article 23(4), that, for the purposes of the Convention, the withdrawal of a reservation or an objection must in all cases be contained in a written act, which excludes the possibility of 'implicit' withdrawals, but raises other problems.[6] Moreover, and especially, Articles 22 and 23 do not qualify the withdrawal that they are concerned with: must the withdrawal, of a reservation or an objection, be total such that it entails the pure and simple disappearance of the reservation or the objection in question? Or, can it be partial? And if this is so, does it not imply the acceptance that a reservation (or an objection) can be modified outside the timing established in Articles 2(1)(d), 19, and 20(5), for the formulation of reservations?

[2] See, in this sense, P.-H. Imbert, *Les réserves aux traités multilatéraux* (Paris: Pedone, 1979), pp 291–3; F. Horn, *Reservations and Interpretative Declarations to Multilateral Treaties* (The Hague: TMC Asser Instituut, 1988), p 226.

[3] Cf L. Migliorino, 'La revoca di riserve e di obiezioni a riserve', *RDI*, 1994, p 315.

[4] See *infra* fns 61 and 128.

[5] See, notably, L. Migliorino, *supra* n 3; Ph. Bretton, 'L'URSS et la compétence de la Cour internationale de Justice en matière de protection des droits de l'homme', *AFDI*, 1989, pp 261–75.

[6] See the commentary on Art. 23.

5. These questions were addressed by the ILC in 2003 then in 2008, during the Commission's 55th and 60th sessions, in the framework of the preparation of the Guide to practice on reservations to treaties, a topic the Commission re-took for consideration in 1995.[7] This commentary will address these questions, as well as the question of the effects of the withdrawal of a reservation or an objection.[8]

The unilateral character of the withdrawal

6. According to Article 22(1) the withdrawal of a reservation is a unilateral act. This paragraph puts an end to the controversy that for a long time fascinated legal scholarship concerning the legal character of the withdrawal: was it a unilateral or a conventional act?[9] This divergence of opinion appeared surreptitiously during the *travaux préparatoires* of Article 22.

7. The issue of the withdrawal of reservations was addressed by the ILC's Special Rapporteurs on the law of treaties only relatively late and, then, only summarily. Almost exclusively concerned with the problem of the criteria of legality of reservations,[10] Brierly and Sir Hersch Lauterpacht did not dedicate any provisions to the question of withdrawal. Only Lauterpacht drew attention to certain propositions made in April 1954 within the Human Rights Commission concerning reservations to the 'Covenants of Human Rights', which expressly allowed the withdrawal of reservations through a simple notification to the UN Secretary-General.[11] Possibly having this precedent in mind, Sir Gerald Fitzmaurice in 1956 proposed a draft Article 40(3), according to which:

> A reservation, though admitted, may be withdrawn by formal notice at any time. If this occurs, the previously reserving State becomes automatically bound to comply fully with the provision of the treaty to which the reservation related, and is equally entitled to claim compliance with that provision by the other parties.[12]

8. This draft was not discussed by the Commission, but in its first report, Sir Humphrey Waldock took up the idea in draft Article 17, concerned with the 'power to formulate and withdraw reservations', which declared the 'absolute right of a State to withdraw a reservation unilaterally, even when the reservation has been accepted by other States'.[13] The first sentence of paragraph 6 of this Article established that:

> A State which has formulated a reservation is free to withdraw it unilaterally, either in whole or in part, at any time, whether the reservation has been accepted or rejected by the other States concerned.[14]

[7] See the commentary on Art. 19, at paras 138–44.

[8] See *infra* paras 52–73 and 78.

[9] On this doctrinal dispute, see P.-H. Imbert, *supra* n 2, p 288; F. Horn, *supra* n 2, pp 223–4, and the references cited.

[10] See the commentary on Art. 19 in this work.

[11] Second Report on the Law of Treaties, A/CN.4/87, pp 29–31, para. 7 in *YILC*, 1954, vol. II, pp 131–2.

[12] *YILC*, 1956, vol. II, p 116. In the commentary to this provision, Fitzmaurice considered that it required no further explanations (ibid, p 127, para. 101).

[13] Commentary on draft Art. 17, *YILC*, 1962, vol. II, p 66, para. 12.

[14] Ibid, p 61. For the wording and fate of the second sentence of this provision, see the commentary on Art. 23 in this work.

9. This provision did not give rise to discussions in the plenary session, but the new draft Article 19 adopted by the Drafting Committee in that same year, exclusively concerned with the 'withdrawal of reservations', contained a paragraph on the effects of the withdrawal.[15] The draft Article was adopted by the ILC, with the insertion of a sentence in the first paragraph of the draft specifying the date of entry into force of the withdrawal,[16] as requested by Bartoš.[17] According to draft Article 22 adopted in first reading:

1. A reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal. Such withdrawal takes effect when notice of it has been received by the other States concerned.
2. Upon withdrawal of a reservation the provisions of article 21 cease to apply.[18]

10. The first paragraph of the commentary to these provisions probably echoes the discussions which took place within the Drafting Committee, and it concerns precisely the question of the unilateral character of the withdrawal. It states that:

It has sometimes been contended that when a reservation has been accepted by another State it may not be withdrawn without the latter's consent, as the acceptance of the reservation establishes a regime between the two States which cannot be changed without the agreement of both. The Commission, however, considers that the preferable rule is that the reserving State should in all cases be authorized, if it is willing to do so, to bring its position into full conformity with the provisions of the treaty as adopted.[19]

11. Three States reacted to draft Article 22,[20] leading the Special Rapporteur to modify the draft. He proposed to:[21]

- give the provision an auxiliary status;
- specify that the notification of withdrawal should be made by the depository, if one existed; and
- a partial moratorium on the date of effect of the withdrawal.[22]

12. In connection with the discussion of these proposals, two members of the Commission maintained that when a reservation formulated by a State is accepted by another State, there is an agreement between the two.[23] But this thesis did not obtain the support of the majority of the members of the Commission, who preferred the idea

[15] *YILC*, 1962, vol. I, 664th meeting, 19 June 1962, p 234, para. 67.

[16] Ibid, 667th meeting, 25 June 1962, p 253, paras 73–5.

[17] Ibid, 664th meeting, 19 June 1962, p 234, paras 68–71.

[18] *YILC*, 1962, vol. II, p 181; Art. 21 concerned the 'application of reservations'.

[19] Ibid, pp 181–2, commentary on Art. 22, para. 1.

[20] Waldock, Fourth Report on the Law of Treaties, *YILC*, 1965, vol. II, pp 55–6. Israel considered that the notification should be made through the depository, whereas the United States considered that the principal merit of the provision 'is the clarification afforded by the provision that "Such withdrawal takes effect when notice of it has been received by the other States concerned"'. The comments by the United Kingdom concerned the date on which the withdrawal became effective. See *infra* para. 32. For the texts of the observations of these three States, see *YILC*, 1966, vol. II, pp 351 (United States), 295 (Israel, para. 14—see the commentary on Art. 23, n 112 in this work, and 344 (United Kingdom).

[21] Waldock, Fourth Report on the Law of Treaties, *YILC*, 1965, vol. II, p 56; and *YILC*, 1965, vol. I, 800th meeting, 11 June 1965, p 174, para. 43.

[22] On the latter point, see *infra* para. 32.

[23] See comments by Verdross and (less clearly) Amado, 800th meeting, 11 June 1965, p 175, para. 49, and p 176, para. 60.

expressed by Bartoš, according to whom '[n]ormally, a treaty was concluded in order to be applied in full; reservations constituted an exception which was merely tolerated'.[24]

13. Following this discussion, the Drafting Committee proposed a different wording for the Article, taking up the two ideas expressed in paragraph 1 of the 1962 text.[25] It is this text that was finally adopted,[26] and which became the final draft of Article 20 ('withdrawal of reservations'):

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides or it is otherwise agreed, the withdrawal becomes operative only when notice of it has been received by the other contracting States.[27]

14. The commentary to this provision was similar to that of the 1962 provision, although it added some elements of clarification.[28] The Commission took the view that:

> the preferable rule is that unless the treaty otherwise provides, the reserving State should always be free to bring its position into full conformity with the provisions of the treaty as adopted by withdrawing its reservation.[29]

15. During the Vienna Conference, the text of this draft Article was adopted without modifications in Article 22 of the Convention, despite several proposals for amendment.[30] Nevertheless, at the suggestion of Hungary, two important additions were adopted:

- first, it was decided to align the procedure for the withdrawal of objections to reservations with that of withdrawal of reservations;[31] and
- second, a fourth paragraph was added to Article 23 with a view to specifying that the withdrawal of reservations and objections had to be made in writing.[32]

16. In his Fourth Report on treaties concluded between States and international organizations or between two or more international organizations, Paul Reuter proposed adding a reference to international organizations in the text of Article 22.[33] The text proposed was adopted without modifications by the Commission,[34] and it was retained

[24] Ibid, p 175, para. 50.

[25] See *supra* para. 9; for the first text adopted by the Drafting Committee in 1965, see *YILC*, 1965, vol. I, 814th meeting, 29 June 1965, p 272, para. 22.

[26] See *YILC*, 1965, vol. I, 816th meeting, 29 June 1965, p 284, paras 56–60; and *YILC*, 1966, vol. I, Part Two, p 327, para. 106.

[27] *YILC*, 1966, vol. II, p 209.

[28] See *supra* para. 10.

[29] *YILC*, 1966, vol. II, p 209, para. 1.

[30] See the list and the text of these amendments and sub-amendments in Vienna Convention on the Law of Treaties, Official Records, 1st and 2nd sessions, Documents of the Plenary Session, pp 141–2, paras 205–11. In its written commentaries, Belgium had partly endorsed the contractual approach (Analytical compilation of comments and observations made in 1966 and 1967 with respect to the final draft Articles on the law of treaties: working paper prepared by the Secretariat—vol. I, A/CONF.39/5 (vol. I), mimeographed). It does not appear that Belgium has taken this suggestion any further.

[31] For the text of the Hungarian amendment (A/CONF.39/L.18), see Vienna Conference on the Law of Treaties, Official Records, p 267. For the discussions concerning the amendment, see Vienna Conference on the Law of Treaties, 2nd session, 11th plenary meeting, 30 April 1969, pp 36–8, paras 14–41.

[32] See the commentary on Art. 23, at paras 6 and 98.

[33] *YILC*, 1975, vol. II, p 38.

[34] See Report of the ILC to the General Assembly, *YILC*, 1977, vol. II, Part Two, pp 114–15.

during the second reading of the Articles.[35] The Vienna Conference of 1986 did not add any changes of substance to the Article.[36]

17. It appears from the drafting history of Article 22 that this Article was not objected to. Even the question of the unilateral character of the act of withdrawal, largely disputed in legal scholarship,[37] gave rise only to very little discussion both within the Commission and at Vienna. The position adopted in this respect, reflected in paragraph 1 of Article 22, is justified: by definition, a reservation is a unilateral act;[38] certainly States can achieve through bilateral agreements results equivalent to those achieved through reservations, by moulding the obligations deriving from the treaty between the parties to the bilateral agreement; but the choice of resorting to a reservation entails, logically and by contrast, a resort to unilateralism. There would thus be no logic to request the consent of other contracting parties to undo what the expression of the unilateral will of the State has done.

18. It is true that, in accordance with Article 20 of the Vienna Convention, a reservation made by a State and not expressly allowed by the treaty has effects only in relation to the States that have accepted it, even if only implicitly. Nevertheless, on the one hand, this consent does not modify the legal character of the reservation—it certainly gives effect to the reservation, but it is a separate unilateral act—and, on the other hand, this is an extremely formalist reasoning that fails to take into account the advantage of limiting the number and scope of reservations in the interest of the integrity of the treaty. As Bartoš correctly pointed out,[39] the parties to a multilateral treaty in principle expect that the treaty will be accepted in its entirety. Also, the parties expect that there exists at least a presumption that reservations are but a necessary evil. It is interesting to note that the withdrawal of reservations, often regulated,[40] is never prohibited by conventional provisions.[41] In the same spirit, both international organizations and the organs of control established in human rights treaties continually encourage States to withdraw the reservations formulated to these treaties.[42]

19. Besides, the recognition of a (unilateral) right of withdrawal is in accordance with the letter or spirit of the express provisions contained in treaties concerning withdrawal of reservations, which are either worded in similar terms to those of Article 22(1),[43] or are aimed at encouraging States to withdraw their reservations 'as soon as circumstances permit'.[44] In addition, it does not appear that the unilateral withdrawal of reservations gives rise to special difficulties.[45]

[35] See the final Report of the ILC to the General Assembly, *YILC*, 1982, vol. II, Part Two, p 37.

[36] See Vienna Conference on the Law of Treaties of 1986, 5th plenary session, 18 March 1986, p 14, para. 62.

[37] See *supra* para. 6.

[38] Cf Art. 2(1)(d) of the Vienna Conventions of 1969 and 1986.

[39] See *supra* para. 12.

[40] See *infra* notably para. 38.

[41] Cf L. Migliorino, *supra* n 5, p 319.

[42] For recent examples, see the commentary on Art. 23, n 208 in this work.

[43] See the examples given by P.-H. Imbert, *supra* n 2, p 287, fn 19; F. Horn, *supra* n 2, p 437, fn 1. See also the examples given by the ILC in the commentary to guideline 2.5.1 of the Guide to Practice ('Withdrawal of reservations'), in Report of the ILC to the General Assembly, 2003, A/58/10, p 198, fn 333.

[44] See eg Art. 167(4) of the Munich Convention on European Patents, 5 October 1973, and the other examples cited by P.-H. Imbert, *supra* n 2, p 287, fn 20; and by F. Horn, *supra* n 2, p 437, fn 2.

[45] See *infra* para. 36. See also the commentary to guideline 2.5.1, in Report of the ILC to the General Assembly, 2003, A/58/10, p 198, para. 12.

20. Hardly contestable in relation to reservations, the unilateral character of the withdrawal of objections is absolutely indisputable.[46] Indeed, it follows from the combination of the provisions in Articles 20 and 21 that as long as a reservation has not been 'established', so that it can only produce legal effects if it has been accepted in one way or another by the other contracting States,[47] objections are sufficient in themselves. An objection displays its effects through the sole will of the objecting State and within the limits by which it is unilaterally established.[48]

21. It is moreover significant that paragraphs 1 and 2 of Article 22 have different wordings on this point: while paragraph 1 specifies that the reservation can be withdrawn 'at any time and the consent of a State which has accepted the reservation is not required for its withdrawal', paragraph 2 does not contain any similar specification in relation to objections. However, such a difference in the drafting must not be interpreted *a contrario*; it simply means that, in the case of objections the purely unilateral nature of the withdrawal is common sense. This is evidenced, moreover, by the fact that the part of the Hungarian amendment aimed at making the text of paragraphs 1 and 2 similar,[49] was rejected at the request of the British delegation, according to which:

> the last phrase of the proposed new paragraph 2 was superfluous, in view of the differing nature of reservations and objections to reservations; the consent of the reserving State was self-evidently not required for the withdrawal of the objection, and an express provision to that effect might suggest that there was some doubt on the point.[50]

Customary and auxiliary status

22. In the case of withdrawal of objections, it is difficult to speak of custom in the almost complete absence of practice.[51] But, these are rules of common sense difficult to contest.

23. In relation to the withdrawal of reservations, as noted by the Commission,[52] 'the customary status of the rules of [Article 22] seems not to be in question[53] and is in line with current practice'.[54]

24. As it happens, 'customary' does not mean 'peremptory' and it goes without saying that the majority of the provisions of the Vienna Convention and, in any event, all of the rules of a procedural character contained therein are of an auxiliary character to the will of States and must be read 'subject to conventional provisions to the contrary'. In this

[46] In this sense, see R. Baratta, *Gli effeti delle riserve ai trattati* (Milan: Giuffrè, 1999), p 326; F. Horn, *supra* n 2, p 223; R. Szafarz, 'Reservations to Multilateral Treaties', *Polish Yearbook of Int'l L*, 1970, p 313.

[47] See the commentary on Art. 20 in this work.

[48] See the commentary on Art. 21 in this work.

[49] A/CONF.39/L.18, *supra* n 31. This amendment was at the origin of the inclusion of a second para. in Art. 23 (see *supra* para. 15).

[50] Sir Francis Vallat, Vienna Conference on the Law of Treaties, 2nd session, 11th plenary meeting, 30 April 1969, p 38, para. 31.

[51] See R. Szafarz, *supra* n 46, p 313.

[52] Commentary to guideline 2.5.1, Report of the ILC to the General Assembly, 2003, A/58/10, p 199, para. 14. The absence of discussion concerning the reproduction of these rules in the 1986 Convention confirms this analysis. The ICJ confirmed the customary character of these rules in its preliminary objections judgment in the case concerning *Armed Activities in the Territory of the Congo (New application: 2002) (Democratic Republic of Congo v Rwanda)*, 3 February 2006, *ICJ Reports 2006*, pp 25–6, para. 41.

[53] Ibid. See the commentary on Art. 19 in this work.

[54] See the Summary of Practice of the Secretary-General as Depository of Multilateral Treaties, prepared by the Treaty Section of the Office of Legal Affairs, UN, 1994, ST/LEG7/Rev.1, p 63, para. 216.

respect, the repetition of the wording '[u]nless the treaty otherwise provides...' at the beginning of each paragraph of Article 22 appears superfluous and does not add anything to the text.[55]

25. This specification, which appeared in the final draft of the ILC adopted in 1966 but not in the draft adopted in 1962,[56] was added by Special Rapporteur Waldock as a follow up to the commentaries received from governments,[57] and was ratified by the Commission. It constitutes a partial answer to the concerns that certain members of the Commission and certain States had voiced in relation to the difficulties that could derive from the sudden withdrawal of a reservation.[58] To cope with these preoccupations, the ILC considered it expedient to include in its Guide to Practice on Reservation to Treaties a number of examples of alternative clauses that it could be wise to include in certain treaties, to avoid the inconveniences that can result from a mechanical application of Article 22.[59]

B. Time of withdrawal

26. Since reservations are considered a 'necessary evil',[60] their withdrawal must be rendered as easy as possible. This justifies the fact that the withdrawal of a reservation can be made 'at any time',[61] even before the entry into force of the treaty for the withdrawing State,[62] although there appear to be no cases in which this has happened.[63]

27. This is all the more so in relation to the withdrawal of objections—rather rare in practice.[64] They can be withdrawn at any moment,[65] since objections depend solely upon the discretionary power of their author.[66] In addition, while being of no help in the re-establishment of the treaty's integrity, the withdrawal also constitutes a simplification of conventional relations, which is another reason why withdrawals should be encouraged.

[55] The same formula or a similar one appears in paras 1, 3, and 5 of Art. 20.

[56] See *supra* paras 9, 13.

[57] Waldock, Fourth Report on the Law of Treaties, *YILC*, 1965, vol. II, p 56; and *YILC*, 1965, vol. I, 800th meeting, 11 June 1965, p 174, para. 45.

[58] See *infra* para. 32.

[59] See *infra* paras 37, 39.

[60] See the commentary on Art. 19 and *supra* para. 12.

[61] One of the privileged moments for the withdrawal of reservations is certainly that of a succession of States since, on this date, the newly independent State can express its intention not to maintain the reservations of its predecessor State (cf Art. 20(1) of the Vienna Convention of 1978 on Succession of States in respect of Treaties; see also guidelines 5.1.1–5.1.3 and 5.2.1 in the ILC Guide to Practice).

[62] This possibility is expressly provided for in the final clauses of the Convention Concerning Customs Facilities for Touring, of its Additional Protocol, and the Customs Convention on the Temporary Importation of Private Road Vehicles, all of 4 June 1954 (para. 5). See *YILC*, 1965, vol. II, p 112.

[63] There are, instead, a large number of examples in which a State, having formulated reservations at the time of signature, does not confirm them following arguments (*représentations*) addressed to it by other signatory States or by the depository (cf the examples in F. Horn, *supra* n 2, pp 345–6). But this is not technically a withdrawal. See the commentary on Art. 23, n 202 in this work. In its commentary to guideline 2.5.1, the ILC quotes a few examples of withdrawal of reservations occurring soon after their formulation, see Report of the ILC to the General Assembly, 2003, A/58/10, p 175, para. 338.

[64] See the commentary on Art. 23, n 183 in this work.

[65] Guideline 2.7.1 of the ILC Guide to Practice repeats the text of Art. 22, para. 2.

[66] Cf *supra* para. 21.

28. Although States do not often withdraw their interpretative declarations, this has happened on a few occasions.[67] From the moment that, save for exceptions conventionally established, a 'simple' interpretative declaration can be 'formulated at any time',[68] such a declaration can also be withdrawn at any time without special formalities. The situation is different, however, with respect to conditional interpretative declarations, which follow for their formulation the legal regime of reservations and must be formulated at the time of the expression of the State's consent to be bound.[69] It inevitably follows that the rules applicable to their withdrawal are necessarily identical to those applicable to the withdrawal of reservations.

C. Effects of withdrawal or modification of a reservation or an objection

Effects of withdrawal or modification of a reservation

29. Article 22 mixes rules concerning the form and procedure of the withdrawal with the question of its effects,[70] which are difficult to dissociate from those of the reservation itself: the withdrawal puts an end to the effects of the reservation. Paragraph 3(a) is only concerned with the effects of the withdrawal of a reservation from the point of view of the date on which the withdrawal 'becomes operative'; although throughout the preparatory work of this provision, the ILC occasionally considered the substantive question of what were the effects of the withdrawal.

Effective date of withdrawal of a reservation

30. Article 22(3)(a) of the 1969 Vienna Convention was not the object of separate discussion during the Vienna Conference of 1968–69, which engaged in the clarification[71] of the text adopted by the ILC in second reading.[72] Its adoption had raised a few debates within the Commission in 1962 and 1965.

[67] Thus, on 1 March 1990, the Italian government communicated to the UN Secretary-General that it 'withdrew the declaration pursuant to which it considered the provisions of articles 17 and 18 [of the Geneva Convention of 28 July 1951 on Refugees] as recommendations' (Multilateral Treaties Deposited with the Secretary-General (MTDSG) (available at: <http://treaties.un.org/pages/ParticipationStatus.aspx>), ch. V.2, fn 25). Equally, 'on 20 April 2001 the Finnish Government informed the Secretary General [of the United Nations] that it had decided to withdraw the declaration concerning article 7, paragraph 2, formulated at the time of ratification' of the Vienna Convention on the Law of Treaties of 1969 (and ratified by this State in 1977) (ibid, vol. III, ch. XXIII.1, p 538, fn 15).

[68] Cf guideline 2.4.3 of the ILC Guide to Practice on Reservations to Treaties. See the Report of the ILC to the General Assembly, 2001, A/56/10, pp 192–3. See also the commentary on Art. 23 in this work.

[69] See guideline 1.2.1 of the ILC Guide to Practice, *YILC*, 1999, vol. II, Part Two, p 240.

[70] Only to the extent that para. 3(a) mentions the 'notification' of a withdrawal.

[71] Cf Vienna Conference on the Law of Treaties, Official Records, Report of the Committee of the Whole, p 142, para. 211 (text of the Drafting Committee).

[72] From the plural ('...when notice of it has been received by the other contracting States'—see *YILC*, 1966, vol. II, p 209) the provision changed into the singular form (see Official Records, Report of the Committee of the Whole, p 142, para. 211 (text of the Drafting Committee), which has the advantage of marking the date on which the withdrawal becomes operative in relation to each contracting State (cf the explanations of Yasseen, President of the Drafting Committee of the Conference, in Official Records, 2nd session, 11th plenary meeting, 30 April 1969, p 36, para. 11). On the final adoption of draft Art. 22 by the Commission, see *YILC*, 1965, vol. I, pp 284–5; *YILC*, 1966, vol. I, Part Two, p 340. The transposition of this provision to the 1986 Convention was not debated: see Paul Reuter, Fourth Report, *YILC*, 1975, vol. II, p 38; Fifth Report, *YILC*,

31. While Fitzmaurice had planned, in his First Report in 1956, to study the effects of the withdrawal of a reservation,[73] this issue was not included in Waldock's First Report, presented to the Commission in 1962.[74] It was only during the Commission debates of 1962 that, for the first time and at the request of Bartoš, Article 22 included a mention that a withdrawal of a reservation 'becomes operative when notice of it has been received by the other contracting States'.[75]

32. Following the adoption of this provision in first reading, three States reacted to it:[76] on the one hand, the United States supported the Article and, on the other hand, Israel and the United Kingdom worried about the problems that a sudden withdrawal could cause to other States parties to the treaty. Their arguments led the Special Rapporteur to propose to add to Article 22 a paragraph (c), with a complex wording, confirming the immediate effect of withdrawals but subordinating it to the notice given to other contracting States, which would be free partially of responsibilities for three months from the date of the withdrawal. With this, Sir Humphrey meant to allow the other parties to bring 'internal laws or administrative practices' into line with the situation resulting from the withdrawal.[77]

33. Moreover, the criticism addressed to the excessive complexity of the solution proposed by Sir Humphrey, certainly a somewhat strange solution, initially divided the members of the Commission. Ruda, supported by Briggs, held that there was no reason to establish a grace period in the case of withdrawal of reservations since such a period did not exist in the case of the initial entry into force of the treaty following the manifestation of consent to be bound.[78] But other members, notably Tunkin and Waldock himself, rightly remarked that the situations were different: in respect of ratification 'a State could obtain all the time it required by the simple process of delaying ratification until it had made the necessary adjustments to its municipal law'; to the contrary, in the case of the withdrawal of a reservation 'the change in the situation did not depend on the will of the other States concerned, but on the will of the reserving State which decided to withdraw its reservation'.[79]

34. Nevertheless, the Commission considered that the proposed partial moratorium found in Waldock's provision 'would unduly complicate the situation and that, in practice, any difficulty that might arise would be obviated during the consultations in which the States concerned would undoubtedly engage'.[80] Yet, in its final commentary, the Commission, while explaining its conclusion that to establish as a general rule the possibility for a State to

1976, vol. II, Part One, p 146; for the (non-)discussion by the Commission: *YILC*, 1977, vol. I, 1434th meeting, 6 June 1977, pp 100–1, paras 30–4; 1435th meeting, 7 June 1977, p 102, paras 1–2; 1451st meeting, 1 July 1977, pp 195–6, paras 12–16. See also the Report of the ILC to the General Assembly, *YILC*, 1977, vol. II, Part Two, pp 114–15; and for the second reading, see Paul Reuter, Tenth Report, *YILC*, 1981, vol. II, Part One, p 63, para. 84. For the (non-)discussion during the 1652nd meeting, 15 May 1981, and the 1692nd meeting, 16 July 1981, see *YILC*, 1981, vol. I, p 54, paras 27–8; pp 264–5, paras 38–9. For the final text, see *YILC*, 1981 vol. II, Part Two, p 140; *YILC*, 1982, vol. II, Part Two, p 37.

[73] See *supra* para. 7 and *infra* para. 45.

[74] See *supra* para. 8.

[75] See *supra* para. 9.

[76] Sir Humphrey Waldock, Fourth Report, *YILC*, 1965, vol. II, p 56.

[77] *YILC*, 1965, vol. I, 800th meeting, 11 June 1965, p 175, para. 47.

[78] Ibid, p 176, para. 59 (Ruda); p 177, para. 76 (Briggs).

[79] Ibid, p 193, paras 68–9 (Tunkin). See also p 175, para. 54 (Tsuruoka); p 177, paras 78–80 (Waldock).

[80] Explanation given by Waldock, ibid, 814th meeting, 29 June 1965, p 273, para. 24.

dispose of a period of time 'to adapt their internal law to the new situation resulting from it...would be going too far', considered that it was convenient to leave to the States parties the possibility of regulating the question with an express provision in the treaty. Also, it considered that, even in the absence of a provision on this question, if a State needed a short period of time to adapt its internal law to the situation resulting from the withdrawal of the reservation, good faith would prevent the State author of the reservation from complaining of the difficulties caused by its own reservation.[81]

35. The Commission thus reintroduced, surreptitiously, in the commentary the exception that Waldock had clumsily attempted to include in the text of the future Article 22 of the Convention.

36. Having regard for the uncertainties resulting from the preparatory works of the Convention—which provide for a rule contradicted in the commentary—the ILC again addressed the question whether it was convenient to include in the Guide to Practice on Reservations to Treaties the point made by the Commission in the commentary of 1965. But it rejected this solution. Following the suggestion of its Special Rapporteur,[82] the Commission considered that the 'rule' set out in the commentary manifestly contradicted that appearing in the Convention and its inclusion in the Guide would therefore depart from that rule. It would be acceptable only if it was felt to meet a clear need, but this is not the case here. In 1965, Sir Humphrey Waldock had 'heard of no actual difficulty arising in the application of a treaty from a State's withdrawal of its reservation';[83] this would still seem to be the case many years later.[84]

37. On the other hand, the ILC included in its Guide to Practice a model clause reflecting the concerns expressed during the drafting of Article 22(3). The Commission recommended States insert this model clause in the treaties they conclude in the future and in relation to which the problems of adaptation to the situation created by the withdrawal of the reservation could arise.[85]

38. Besides, several treaties (concerning especially the status of persons or certain problems of private international law) establish a delay in the effectiveness of the withdrawal of reservations, longer than the common law period established in Article 22(3)(a). This delay is, in general, of one to three months calculated, in the majority of cases, from the date of notification of the withdrawal of the reservation to the depositary of the treaty and not to the other States parties.[86]

39. To the contrary, a shorter time-lapse than that established in Article 22 can be especially provided for in the treaty. A treaty may also provide that it is up to the withdrawing State to determine the date upon which the withdrawal will take effect.[87] In

[81] *YILC*, 1966, vol. II, p 209, commentary on Art. 20, para. 2.

[82] A. Pellet, Seventh Report on Reservations to Treaties, A/CN.4/526/Add.2, para. 161.

[83] *YILC*, 1965, vol. I, 814th meeting, 29 June 1965, p 273, para. 24.

[84] Commentary to guideline 2.5.8 ('Effective date of withdrawal of a reservation') in ILC Report to the General Assembly, 2003, A/58/10, p 235, para. 8.

[85] Model Clause A—Deferment of the effective date of the withdrawal of a reservation:

A Contracting Party which has made a reservation to this treaty may withdraw it by means of a notification addressed to [the depositary]. This withdrawal shall take effect on the expiration of a period of X [months] [days] after the date of receipt of the notification by [the depositary]. (ibid, p 239)

[86] See the examples in P.-H. Imbert, *supra* n 2, p 290, fn 36; F. Horn, *supra* n 2, p 438, fn 19; ILC, *supra* n 84, p 236, fn 461.

[87] See the examples in ILC, ibid, pp 236–7, para. 10 and fns 462, 463.

consequence, the Commission adopted two other model clauses reflecting this wording, in order to respond to the needs of the negotiators who wish to reduce the period established in the Convention or lessen its rigidity.[88]

40. Nevertheless, the principle is the one established in Article 22(3)(a) of the Convention. Of course, this principle does not escape criticism. In addition to the problems that may be caused by the withdrawal becoming operative from the moment notice of it is received by the other parties, which have been analysed *supra*,[89] it has been said that this provision 'does not completely resolve the question of the time factor':[90] certainly, thanks to the explicit mention introduced by the Conference of 1969,[91] the other parties know precisely on what date the withdrawal takes effect, but the author of the withdrawal remains uncertain as to the date on which its new obligations take effect, since the notification may be delivered to the other States parties on different dates.[92] This inconvenience, negligible in practice,[93] is in any event compensated by the advantages derived from the rule of Article 22(3)(a), which accounts for concern to avoid the contracting parties of the State withdrawing their reservation may see their responsibility engaged for failure to respect the provisions of the treaty in their relations with that State, a failure due to their ignorance of the withdrawal of the reservation.[94] This concern must be endorsed.

41. It can also be asked whether, in the absence of an express provision authorizing it, a State can freely establish the date on which the withdrawal of its reservation becomes operative. An affirmative answer is obvious, if the date established by the withdrawing State is posterior to the date on which the withdrawal would become operative if Article 22(3)(a) were applied: the time-lapse established in that provision aims to prevent other parties from being taken by surprise and to allow them to be fully informed of the scope of their engagements towards the State which withdraws its reservation. Thus, as long as information is prior and effective, there is no inconvenience for the reserving State to establish the date upon which its withdrawal will become operative.

42. But the answer is not the same if the date established by the reserving State is prior to the reception of the notification of withdrawal by the other contracting States: in this case, only the author of the withdrawal (and possibly the depository) know that the reservation has been withdrawn. This is so *a fortiori* when the withdrawal is assumed to be retroactive, as has sometimes occurred.[95] In these types of cases, in the absence of an express clause in the treaty, the unilaterally expressed will of the reserving State could not prevail over the clear provision of Article 22(3)(a), if the other States parties oppose its unilateral decision.

43. It can nevertheless be asked whether it is convenient to reserve the cases concerning treaties which create 'integral obligations', in particular in the field of human rights.

[88] Model Clauses B and C, ibid, pp 240–1.

[89] See *supra* paras 31–8.

[90] '[N]e résout pas vraiment la question du facteur temps': P.-H. Imbert, *supra* n 2, p 290.

[91] See *supra* n 71.

[92] See, in this sense, comments by Briggs, *YILC*, 1965, vol. I, 800th meeting, 14 June 1965, p 177, para. 75; ibid, 814th meeting, 29 June 1965, p 273, para. 25.

[93] See *supra* para. 36.

[94] See the commentary on draft Art. 22 adopted in first reading in *YILC*, 1962, vol. II, p 201, para. 2; and on draft Art. 20 adopted in second reading, in *YILC*, 1966, vol. II, pp 181–2, para. 2.

[95] See, the example in P.-H. Imbert, *supra* n 2, p 291, fn 38 (withdrawal of a reservation by Denmark to the 1951 and 1954 Conventions on Refugees and Stateless Persons; see MTDSG, *supra* n 67, respectively ch. V.2, fn 19, and ch. V.3, fn 10).

In such a situation, there is no inconvenience in permitting the withdrawal of the reservation to take effect immediately, and even retroactively, if the author of the reservation so wishes, for in this hypothesis, the rights of other States are not affected.[96] This hypothesis was expressly provided for by the ILC in guideline 2.5.9, included in the Guide to Practice on Reservations to Treaties of 2003:

2.5.9. Cases in which a reserving State may unilaterally set the effective date of withdrawal of a reservation

The withdrawal of a reservation takes effect on the date set by the withdrawing State where:

(*a*) That date is later than the date on which the other contracting States or international organizations received notification of it; or

(*b*) The withdrawal does not add to the rights of the withdrawing State or international organization in relation to the other contracting States or international organizations.[97]

The consequences of the withdrawal or modification of a reservation

44. Despite its general title, Article 22 is silent in relation to the most important question concerning the withdrawal of reservations: that of its effects. This aspect of the withdrawal of reservations was discussed during the *travaux préparatoires* of the 1969 Convention. However, the question of the modification of reservations was not dealt with, so it is convenient to make some remarks on this question in the present commentary.

The consequences of a total withdrawal

45. In his First Report on the law of treaties, Fitzmaurice had proposed that, once a reservation is withdrawn:

the previously reserving State becomes automatically bound to comply fully with the provision of the treaty to which the reservation related, and is equally entitled to claim compliance with that provision by the other parties.[98]

Likewise draft Article 22(2), adopted in first reading by the ILC in 1962, established that '[u]pon withdrawal of a reservation the provisions of article 21 [concerning the application of reservations] cease to apply'.[99] This sentence disappeared in the final draft of the Commission,[100] despite the fact that, in plenary, Waldock had suggested that the Drafting Committee discuss the possibility 'that the effect of the withdrawal of a reservation might be that the treaty entered into force in the relations between two States between which it had not previously been in force'.[101]

46. During the Vienna Conference, certain amendments tended to re-establish a similar provision in the Convention.[102] The Drafting Committee of the Conference, however,

[96] In this sense, see P.-H. Imbert, *supra* n 2, pp 290–1.

[97] Report of the ILC to the General Assembly, 2003, A/58/10, p 242.

[98] *YILC*, 1956, vol. II, p 116, Art. 40, para. 3.

[99] *YILC*, 1962, vol. II, p 201. See *supra* para. 9.

[100] It was abandoned in second reading following consideration by the Drafting Committee of the new draft Article proposed by Sir Humphrey Waldock, who only partly maintained this sentence (cf *supra* paras 11, 31), without any explanations (cf *YILC*, 1965, vol. I, 814th meeting, 29 June 1965, p 272, para. 22).

[101] Ibid, 800th meeting, 14 June 1965, p 178, para. 86; in the same sense, Rosenne, ibid, para. 87.

[102] Amendments by Austria and Finland, A/CONF.39/C.1/L.4 and Add.1, complemented by a sub-amendment proposed by the USSR, A/CONF.39/C.1/L.167, in Vienna Conference on the Law of Treaties, Official Records, p 141.

rejected them as it considered the amendments to be superfluous and that the effects of the withdrawal of a reservation were obvious.[103] This is only partially true.

47. There is no doubt that 'the effect of withdrawal of a reservation is obviously to restore the original text of the treaty'.[104] But three situations should be distinguished.

48. In the relations between the reserving State and the States that have accepted the reservation (Art. 20(4) of the Convention), the reservation loses the effects that it produces pursuant to Article 21(1) of the Convention:

> when this situation occurs, the withdrawal of the reservation will have the effect to restore the original content of the treaty in the relations between the reserving State and the State which has accepted it. The withdrawal of the reservation creates the legal situation which would have existed if the reservation had not been made.[105]

49. The same is applicable to the relations between the State withdrawing its reservation and a State that had objected to the reservation but had failed to oppose it at the time of the entry into force of the treaty between itself and the reserving State. In this case, in accordance with Article 21(3) of the Convention, the provisions concerned with the reservation would not apply in the relations between the two parties:

> when this situation occurs, the withdrawal of the reservation has the effect to extend, in the relations between the reserving State and the objecting State, the application of the treaty to the provisions included in the reservation.[106]

50. The withdrawal of a reservation has radical effects when the objecting State had also opposed the entry into force of the treaty between itself and the reserving State. In this situation, the treaty enters into force on the date upon which the withdrawal becomes operative.[107] 'For a state...which had previously expressed a maximum-effect objection, the withdrawal of the reservation will mean the establishment of full treaty relations with the reserving State'.[108] In other words, the withdrawal of a reservation

[103] Vienna Conference on the Law of Treaties, 1st session, 70th meeting, 14 May 1968, declaration by Yasseen, President of the Drafting Committe, p 417, para. 37.

[104] D. Bowett, 'Reservations to Non-Restricted Multilateral Treaties', *BYBIL*, 1976–77, p 87. See also R. Szafarz, *supra* n 46, p 313.

[105] 'Intervenendo in una situazione di questo tipo la revoca di la riserva produce l'effetto di estendere, nei rapporti tra lo Stato riservante e lo Stato obiettante, l'applicazione del trattato anche alle disposizioni coperte dalla riserva' in L. Migliorino, *supra* n 3, p 325 (editor's translation). In the same sense, cf R. Szafarz, *supra* n 46, p 314. This author cites the example of the 1989 withdrawal of Hungary of its reservation to Art. 48(2) of the 1961 Single Convention on Narcotic Drugs, establishing ICJ jurisdiction, see MTDSG, *supra* n 67, ch. VI.15, fn 20. This reservation had not been objected to. By virtue of the withdrawal, the ICJ's jurisdiction to interpret and apply the convention is established with effect from the date on which the withdrawal became operative, see L. Migliorino, ibid, pp 325–6.

[106] 'Intervenendo in una situazione di questo tipo la revoca di la riserva produce l'effetto di estendere, nei rapporti tra lo Stato riservante e lo Stato obiettante, l'applicazione del trattato anche alle disposizioni coperte dalla riserva' in L. Migliorino, *supra* n 3, pp 326–7 (editor's translation). This author quotes the example of the 1972 withdrawal by Portugal of its reservation to Art. 37(2) of the 1961 Vienna Convention on Diplomatic Relations, which had been objected to by numerous States which failed to oppose it at the time of the entry into force of the Convention between themselves and Portugal, see MTDSG, *supra* n 67, ch. III.3, fn 23.

[107] See Art. 24 of the Convention, notably, para. 3.

[108] R. Szafarz, *supra* n 46, pp 315–16. Similarly, J. M. Ruda, 'Reservations to Treaties', *RCADI*, 1975-III, vol. 146, p 202; D. Bowett, *supra* n 104, p 87; L. Migliorino, *supra* n 5, pp 328–9. The latter author quotes the example of the 1989 withdrawal by Hungary of its reservation to Art. 66 of the Vienna Convention of 1969, in MTDSG, *supra* n 67, ch. XXIII, fn 17. The example is not really accurate for the objecting States had not opposed the application of the Convention in their relations with Hungary; the 'maximum' effect of an objection to a reservation remains extremely rare, see *supra* commentary on Art. 21 in this work.

entails the application of the treaty as a whole (unless, of course, other reservations, matched with 'maximum' objections, exist or unless the reservation is no longer valid for other reasons) in the relations between the State withdrawing its reservation and the other contracting States, whether these States have accepted or objected to the reservation, on the understanding that, in the case of objections, if the objecting State had opposed the entry into force of the treaty between itself and the author of the reservation, the treaty will enter into force only from the date on which the withdrawal becomes operative.

51. Guideline 2.5.7 of the ILC Guide to Practice on Reservations to Treaties (Effect of withdrawal of a reservation) reflects these different cases.[109]

The modification of a reservation

52. The Vienna Convention is completely silent on the subject of modifications to reservations. This question, which went practically without mention during the preparatory work,[110] was nevertheless examined by the ILC within the framework of the Commission's Guide to Practice on Reservations to Treaties. The question of the modification of a reservation must be addressed in conjunction with the relative questions of the withdrawal of the reservation, on the one hand, and the late formulation of reservations, on the other hand.[111] To the extent that the modification aims at restricting the scope of a reservation, it concerns a partial withdrawal of the reservation as originally formulated. This type of modification does not raise any problems of principle and is subjected to the general rules on withdrawal of reservations. To the contrary, if the modification has the effect of enlarging the scope of the existing reservation, it appears logical to begin from the idea that this is a late formulation of a reservation and that the relevant rules concerning the late formulation of a reservation should be applied.

Restriction of the scope of a reservation (partial withdrawal)

53. According to the prevailing doctrine, nothing stands in the way of the modification of a reservation insofar as this modification aims at restricting the scope of the original reservation. Similarly, the prevailing doctrine analyses this type of modification as a partial withdrawal.[112] When such a modification is expressly provided for by the treaty, no problems exist. While this is relatively rare, there are reservation clauses to this effect or reservation clauses allowing the partial or total withdrawal of the reservation.[113] The fact that partial or total withdrawals are mentioned simultaneously in numerous treaty clauses highlights the close relationship that exists between them. This relationship, confirmed in practice, is however sometimes contested in the literature.

[109] Report of the ILC to the General Assembly, 2003, A/58/10, p 199.

[110] See however *infra* para. 54.

[111] On the late formulation of reservations, see commentary on Art. 2(2)(d).

[112] See eg A. Aust, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2000), p 128; P.-H. Imbert, *supra* n 2, p 293; J. Polakiewicz, *Treaty-Making in the Council of Europe* (Strasbourg: Council of Europe Publishing, 1999), p 96.

[113] See the examples given by the ILC in the commentary to guideline 2.5.10 (Partial withdrawal of a reservation), in Report of the ILC to the General Assembly, 2003, A/58/10, pp 244–5, paras 2–3.

54. During the preparation of the draft Articles on the law of treaties by the ILC, Waldock suggested the adoption of a draft Article placing the total and partial withdrawal of reservations on an equal footing.[114] Following the consideration of this draft by the Drafting Committee, it returned to the plenary stripped of any reference to the possibility of withdrawing a reservation 'in part',[115] although no reason for this modification can be inferred from the summaries of the discussions. The most plausible explanation is that this seemed to be self-evident—'he who can do more can do less'—and the word 'withdrawal' should probably be interpreted, given the somewhat surprising silence of the commentary, as meaning 'total or partial withdrawal'.

55. The fact remains that this is not entirely self-evident and that practice and the literature appear to be somewhat undecided. Thus, in his work on reservations which appeared in 1979, Imbert regretted that the cases of modification of reservations aimed at restricting their scope of which he had knowledge had only been possible in the 'absence of objections on the part of other contracting States', and he emphasized that:

> it would be desirable to encourage this procedure, as it allows States to progressively adapt their participation in the treaty to the evolution of their national legislation, and can constitute a transition towards the complete withdrawal of reservations.[116]

56. In practice this seems to have been understood, at least in the European framework. Polakiewicz quotes a number of reservations to Conventions concluded within the framework of the Council of Europe which were modified without arousing opposition.[117] For its part, the European Commission of Human Rights 'showed a certain flexibility' as to the time requirement set out in Article 57 (former Art. 64) of the European Convention on Human Rights limiting (notably in time) the possibility of formulating a reservation:

> As internal law is subject to modification from time to time, the Commission considered that a modification of the law protected by the reservation, even if it entails a modification of the reservation, does not undermine the time requirement of article 64. According to the Commission, despite the explicit terms of article 64,...to the extent that a law *then in force* in its territory is not in conformity...the reservation signed by Austria on 3 September 1958 (1958–1959) (2 *Annuaire* 88–91) covers...the law of 5 July 1962, which did not have the result of enlarging, *a posteriori*, the area removed from the control of the Commission.[118]

[114] Cf his First Report, draft Art. 17, *YILC*, 1962, vol. II, p 65, para. 9.

[115] Ibid, pp 175 ff; on the changes made by the Drafting Committee to the draft prepared by the Special Rapporteur, see *supra* para. 9.

[116] P.-H. Imbert, *supra* n 2, p 293. *Contra* J.-F. Flauss, 'Le contentieux de la validité des réserves à la CEDH devant le Tribunal fédéral suisse: Requiem pour la déclaration interprétative relative à l'article 6, paragraphe 1', *RUDH*, 1993, p 301.

[117] J. Polakiewicz, *supra* n 112, p 95. It can, however, be questioned whether these are real reservations.

[118] Comme la législation interne est susceptible de modification de temps en temps, la Commission a considéré qu'une modification de la loi protégée par la réserve, même si elle entraîne une modification de la réserve, ne porte pas atteinte à l'exigence temporelle de l'article 64. Selon la Commission, malgré les termes exprès de l'article 64,...dans la mesure où une loi alors en vigueur sur son territoire n'est pas conforme...la réserve souscrite par l'Autriche le 3 septembre 1958 (1958–1959) (2 Annuaire 88–91) couvre...la loi du 5 juillet 1962, laquelle n'a pas eu pour résultat d'élargir a posteriori le domaine soustrait au contrôle de la Commission (editor's translation; W. A. Schabas, 'Article 64' in L. E. Pettiti, E. Decaux, and P.-H. Imbert (eds), *La Convention européenne des droits de l'homme—commentaire article par article* (Paris: Economica, 1995), p 932, original emphasis; footnotes omitted).

57. This latter clarification is essential and undoubtedly provides the key to this jurisprudence: it is because the new law does not enlarge the scope of the reservation that the Commission considered that it was covered by the reservation.[119] Technically, what is at issue is not a modification of the reservation itself, but the effect of the modification of the internal law; nevertheless, it seems legitimate to make the same argument in relation to reservations. Moreover, in some cases, States formally modified their reservations to the European Convention on Human Rights (in the sense of diminishing their scope) without protest from the other contracting parties.[120]

58. The jurisprudence of the European Court of Human Rights can be interpreted in the same way, in the sense that, while the Strasbourg Court does not allow late reservations,[121] it proceeds differently if the law adopted after ratification 'goes no farther than a law in force on the date of the said reservation'.[122] Moreover, following the *Belilos* judgment, which held a Swiss 'declaration' attached to its accession to the European Convention on Human Rights,[123] the Swiss Federal Tribunal, while annulling on other bases the new Swiss declaration, in a judgment of 17 December 1992, in the case of *Elisabeth B v Council of State of Thurgau Canton*, considered that:

If the declaration of 1988 represented merely a clarification and a limitation of the reservation formulated in 1974, then nothing would be against this practice. Even though neither article 64 ECHR nor the Vienna Convention on the Law of Conventions [sic] of 1969 (RS 0.111) expressly regulate this question, it can be considered that a new formulation of an existing reservation must, as a general rule, be always possible ? insofar as this modification has the purpose of restricting the existing reservation. This practice does not limit the inter-state undertaking of the State in question, but it increases it in accordance with the Convention.[124]

59. This is an excellent presentation of both the applicable law and its basic underlying premise: there is no valid reason for preventing a State from limiting the scope of a previous reservation by withdrawing it, if only in part; the treaty's integrity is thereby

See the Reports of the Commission in *Association X v Austria*, Application no. 473/59, *Yearbook*, vol. 2, p 405; *X v Austria*, Application no. 88180/78, DR 20, pp 23–5.

[119] Cf the partially dissenting Opinion of Judge Valticos in *Chorherr v Austria*: 'If the law is modified, the divergence to which the reservation refers could probably, if we are not strict, be maintained in the new text, but it could not, of course, be strengthened' (judgment of 25 August 1993, Series A, no. 266-B, p 40).

[120] Cf the successive partial withdrawals by Finland of its reservation to Art. 5 in 1996, 1998, 1999, and 2001 (available at: <http://conventions.coe.int/treaty/en/cadreprincipal.htm>).

[121] Cf the judgment in *Belilos*, 29 April 1988, Series A, no. 132.

[122] Judgment of 25 February 1982, *Campbell and Cosans*, Series A, no. 48, p 17, para. 37.

[123] Judgment of 29 April 1988, Series A, no. 132, para. 60.

[124] Si la déclaration de 1988 ne représente qu'une précision et une limitation de la réserve apportée en 1974, rien ne s'oppose à ce procédé. Même si ni l'article 64 CEDH ni la Convention de Vienne sur le droit des conventions [sic] de 1969 (RS 0.111) ne règlent expressément cette question, il y a lieu de considérer qu'une nouvelle formulation d'une réserve existante doit en règle générale toujours être possible lorsqu'elle a pour but de restreindre une réserve existante. Ce procédé ne limite pas l'engagement inter-étatique de l'Etat concerné mais l'augmente en conformité de la Convention (editor's translation) in *JT*, vol. I: *Droit fédéral*, 1995, p 535.

Curiously, J.-F. Flauss, who does not cite this passage, affirms that 'at first sight, it is difficult, in the current state of the law of the Convention and of the law of treaties, to recognize to "guilty" States a right of adaptation, even if circumscribed to the sole cases of partial invalidity' ('de prime abord, il est difficile, en l'état du droit de la Convention et du droit international des traités, de reconnaître aux Etats "condamnés" un droit d'adaptation, à supposer même qu'il soit circonscrit aux seuls cas d'invalidité partielle') (editor's translation) in *supra* n 115, p 298.

better ensured and it is not impossible that, as a consequence, some of the other parties may withdraw objections that they had made to the initial reservation.[125] Furthermore, as has been pointed out, failing this possibility the equality between parties would be disrupted (at least in cases where a treaty-monitoring body exists): 'States which have long been parties to the Convention might consider themselves to be subject to unequal treatment by comparison with States which ratified the Convention [more recently] and, *a fortiori*, with future Contracting Parties'[126] that would have the advantage of knowing the treaty body's position regarding the validity of reservations comparable to the one that they might be planning to formulate and of being able to modify it accordingly.

60. It was such considerations[127] that led the Commission to state in its preliminary conclusions of 1997, concerning reservations to law-making multilateral treaties including human rights treaties, that in taking action on the inadmissibility of a reservation the State 'may, for example, modify its reservation so as to eliminate the inadmissibility'.[128] Obviously, this is possible only if it has the option of modifying the reservation by partially withdrawing it.[129]

61. Moreover, in practice, partial withdrawals, while not very frequent, are far from non-existent. In 1988, Horn noted that, of 1,522 reservations or interpretative declarations made in respect of treaties of which the Secretary-General of the United Nations is the depositary,

> 47 have been withdrawn completely or partly...[130] In the majority of cases, i.e., 30 statements, the withdrawals have been partial. Of these, six have experienced successive withdrawals leading in only two cases to a complete withdrawal.[131]

This trend, while not precipitous, has continued in recent years.[132]

62. The Secretary-General's practice is not absolutely consistent, however, and, in some cases, even those involving modifications which apparently reduce the scope of the reservations in question, he proceeds as in the case of late formulation of reservations[133] and confines himself, 'in keeping with the...practice followed in similar cases', to receiving 'the declarations in question for deposit in the absence of any objection on the part of

[125] In this sense F. Horn, *supra* n 2, p 223.

[126] J.-F. Flauss, *supra* n 116, p 299.

[127] See *YILC*, 1997, vol. II, Part Two, pp 49, 55, paras 86, 141–4; A. Pellet, Second Report on Reservations to Treaties, A/CN.4/477/Add.1, *YILC*, 1996, vol. II, Part One, pp 80–1, paras 241–51.

[128] *YILC*, 1997, vol. II, Part Two, p 57, para. 10.

[129] During its 62nd session in 2010, the ILC inflected its approach and considered that there was a rebuttable presumption that, when a State had made an impermissible reservation, it was bound by the treaty as a whole without the benefit of its reservation unless a contrary intent can be established. See guideline 4.5.2 (Statute of the author of an impermissible reservation vis-à-vis the treaty).

[130] Of these 47 withdrawals, 11 occurred during a succession of States. There is no question that a successor State may withdraw reservations made by its predecessor, in whole or in part (cf Art. 20 of the 1978 Vienna Convention on Succession of States in respect of Treaties and guidelines 5.1.1 and 5.1.2 of the ILC Guide to Practice).

[131] P.-H. Imbert, *supra* n 2, p 226. These statistics must, however, be read with caution: thus, eg, the author cites, in reality, only one example of successive partial withdrawals leading to total withdrawal of the reservation (see fn 26, p 438): that of Denmark in relation to the Convention on Refugees, but in reality (1) with only one exception it concerned total withdrawals of different reservations, and (2) one of the Danish original reservations, subsists in its reformulated version, cf MTDSG, *supra* n 67, ch. V.2, fn 19 and the corresponding text.

[132] See the examples given by the ILC in the commentary on guideline 2.5.10 to the Guide to Practice on Reservations to Treaties, in Report of the ILC to the General Assembly, 2003, A/58/10, pp 252–3, para. 13.

[133] See A. Pellet, Fifth Report on Reservations to Treaties, A/CN.4/508/Add.3 and Add.4, paras 279–325.

any of the contracting States, either to the deposit itself or to the procedure envisage'.[134] This practice is defended in the following words in the Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties:

> when States have wished to substitute new reservations for initial reservations made at the time of deposit...this has amounted to a withdrawal of the initial reservations—which raised no difficulty—and the making of (new) reservations.[135]

This position was confirmed by a memorandum dated 4 April 2000 from the United Nations Legal Counsel, specifying 'the practice followed by the Secretary-General as depositary in respect of communications from States which seek to modify their existing reservations to multilateral treaties deposited with the Secretary-General or which may be understood to seek to do so' without making a distinction between partial withdrawals and the enlargement of a reservation.[136]

63. This position is more qualified than initially appears. The memorandum of 4 April 2000 must be read together with the Legal Counsel's reply, of the same date, to a *note verbale* from Portugal reporting, on behalf of the European Union, problems associated with the 90-day time period, traditional for reactions to reservations formulated late.[137] In this *note*, a distinction is drawn between 'a modification of an existing reservation' and 'a partial withdrawal thereof'. In the case of the second type of communication:

> the Legal Counsel shares the concerns expressed by the Permanent Representative that it is highly desirable that, as far as possible, communications which are no more than partial withdrawals of reservations should not be subjected to the procedure that is appropriate for modifications of reservations.

The question is thus merely one of wording: the Secretary-General refers to withdrawals which enlarge the scope of reservations as 'modifications' and to those which reduce that scope as 'partial withdrawals'; the latter are not (or should not be, although this is not always translated into practice) subject to the cumbersome procedure required for the late formulation of reservations.[138] To require a one-year time period before the limitation of a reservation can produce effects, subjecting it to the risk of a 'veto' by a single other party, would obviously be counterproductive and in violation of the principle that, to the extent possible, the treaty's integrity should be preserved.

64. Since it does not concern a new reservation but the restriction of an existing reservation, reformulated in such a way as to more completely bring closer together the undertakings of the reserving State with the undertakings established in the treaty, it is at

[134] Cf eg the procedure followed in the case of Azerbaijan's modification of 28 September 2000 of its original reservation—modification which had an undeniably restrictive character (in response to the comments of States which had objected to its initial reservation)—the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (MTDSG, *supra* n 67, ch. IV.12, fn 9).

[135] *Supra* n 54, p 62, para. 206.

[136] Memorandum from the United Nations Legal Counsel addressed to the Permanent Representatives of States Members of the United Nations (LA41TR/221 (23–1)). For further information on this time limit, see A. Pellet, Fifth Report on Reservations to Treaties, A/CN.4/508/Add.4, paras 320–4.

[137] See the commentary on Art. 2(1)(d).

[138] See, ibid. Cf guidelines 2.3.1–2.3.3 of the Guide to Practice on Reservations to Treaties and their commentaries, in Report of the ILC to the General Assembly, 2001, A/56/10, pp 185–91.

least doubtful that the other contracting parties may object to the new formulation:[139] if the other contracting parties had agreed to the reservation as originally formulated, it is difficult to see that they could object to the new one, which would, hypothetically, have reduced effects. Just as a State cannot object to a pure and simple withdrawal of a reservation, it can no more object to a partial withdrawal.

65. The partial withdrawal of reservations presents another special problem. The total withdrawal of a reservation deprives the objections originally raised to it of any effect, even in the case where the objection had as its main effect to prevent the entry into force of the treaty between the objecting and reserving States.[140] There is no reason why this should be so also in the case of partial withdrawal. Surely objecting States would be encouraged to re-examine their objections and withdraw them if the reason or reasons that gave rise to them disappear by virtue of the modification of the reservation. These States can certainly withdraw their objections.[141] But these States cannot be obliged to do so, and they can perfectly maintain their objections if they consider it expedient.[142]

66. The only real question in this respect is whether the other contracting States must formally confirm their objections or whether the objections must be considered to apply to the reservation in its new formulation. Existing practice undoubtedly supports the presumption of continuity of objections: that is, there seem to be no cases in which the withdrawal of a reservation has led to the withdrawal of objections and the UN Secretary-General, in his role as depositary, seems to consider it obvious that objections continue to apply.[143] This appears to be logical: a partial withdrawal does not remove the initial reservation and it does not constitute a new reservation; *a priori*, the objections made to the original reservation legitimately continue to apply for as long as their authors have not withdrawn them.

Enlargement of the scope of a reservation

67. If, after having expressed its consent accompanied by a reservation, a State or an international organization wishes to enlarge the reservation in question, that is, modify to its advantage the legal effect of the provisions of the treaty covered by the reservation, the restrictions imposed on the formulation of reservations in general must be applied. For the same reasons:

- it is essential not to encourage the late formulation of reservations to treaties;
- similarly, legitimate reasons can lead a State or an international organization to wish to modify a previous reservation and, in certain cases, it will be possible for the author of the reservation to denounce the treaty and accede to it again with an 'enlarged reservation';

[139] Whereas they certainly can remove their initial objections which, as the reservations themselves, can be withdrawn at all times; see *supra* para. 27.

[140] See *supra* paras 48–9.

[141] See *supra* para. 27.

[142] Even though they cannot take advantage of the partial withdrawal of a reservation to formulate new objections, cf *supra* para. 64.

[143] eg the objections of numerous States to the reservation made by Libya to the 1979 Convention on the Elimination of All Forms of Discrimination against Women were not modified following Libya's reformulation of the reservation and continue to appear in MTDSG, *supra* n 67, ch. IV.8, *passim* (Libya).

- it is always possible for the parties to a treaty to modify the treaty at any time if there is unanimity;[144] it is thus possible for them unanimously to authorize a party to the treaty to modify, at any time, the legal effect of certain provisions of the treaty or the legal effect that the treaty as a whole has on certain matters, as far as that party is concerned.[145]

68. Practice is rare on this point; but the few scholarly writings on this specific question unanimously agree.[146] Polakiewicz, Deputy Head of the Department of the Legal Adviser and Treaty Office of the Council of Europe, considers that, in the framework of this Organization:

> There have been instances where states have approached the Secretariat requesting information as to whether and how existing reservations could be modified. In its replies the Secretariat has always stressed that modifications which would result in an extension of the scope of existing reservations are not acceptable. Here the same reasoning applies as in the case of belated reservations...Allowing such modifications would create a dangerous precedent which would jeopardise legal certainty and impair the uniform implementation of European treaties.[147]

69. However, at a universal level, this conclusion is undoubtedly too strict. In any event, whatever may be the answer to this question, it has not impeded the 'alignment' of the practice concerning the enlargement of reservations to that of late formulation of reservations,[148] something that appears to be very logical.

[144] Cf Art. 39 of the Convention.

[145] This argument was vigorously contested by a minority of ILC members during the 55th session of the Commission; it was, nevertheless, approved by a large majority. See Report of the ILC to the General Assembly, 2003, A/58/10, pp 161–2, paras 353–5; p 163, paras 360–1.

[146] See eg A. Aust, *supra* n 112, p 130. See also J. Polakiewiscz, *supra* n 112, p 96; and, *a contrario*, P.-H. Imbert, *supra* n 2, p 293.

[147] Ibid. This position is similar to that of the European Commission on Human Rights in the case *Chrysostomos v Turkey* (decision of 4 March 1991), Application nos 15299/89, 15300/89, and 15318/89, *RUDH*, 1991, p 193. The same author queries (ibid) whether it is possible for a State to denounce a treaty to which it has appended reservations to subsequently ratify it with larger reservations. He considers that proceeding in this way may constitute an abuse of right, on the basis of arguments peculiar to the conventions of the Council of Europe. The decision of the Swiss Federal Tribunal of 17 December 1992 in the case of *Elisabeth B v Council of State of Thurgau Canton, supra* n 124, pp 523–37, may be interpreted in this sense. See A. Pellet, Seventh Report on Reservations to Treaties, A/CN.4/526/Add.3, paras 199–200. In this sense, see J.-F. Flauss, *supra* n 116, p 303. In this respect, it may be noted that on 26 May 1998, Trinidad and Tobago denounced the Optional Protocol to the 1966 International Covenant on Civil and Political Rights and subsequently ratified it again, on the same day, and formulated a new reservation, see MTDSG, *supra* n 67, ch. IV.5, fn 1. Following numerous objections and the decision of the Committee of Human Rights of 31 December 1999, Comm. No. 845/1999, Trinidad and Tobago once again denounced the treaty. See MTDSG, ibid. This case, however, must be distinguished from the cases under consideration, for it did not concern the modification of an existing reservation, but the formulation of a new reservation.

[148] G. Gaja quotes the example of the 'correction' made by France on 11 August 1982 to the reservation in its instrument of ratification of the 1978 Protocol concerning the 1973 International Convention for the Prevention of Pollution from Ships, deposited with the Secretary-General of the International Maritime Organization on 25 September 1981, in 'Unruly Treaty Reservations', in *International Law at the Time of Its Codification: Essays in Honour of Roberto Ago* (Milan: Giuffrè, 1987), pp 311–12. This case concerns a very special case, since on the date of the 'correction' the MARPOL Protocol had not yet entered into force with respect to France; it would not appear that in this case the depositary subordinated the acceptance of the new text to the unanimous agreement of the other States parties—a number of which objected to France's modified reservation (cf Status of Multilateral Conventions and Instruments in Respect of which the International Maritime Organization or Its Secretary-General Performs Depositary or Other Functions as at 31 December 1999, J/7339, p 77).

70. The depositaries treat 'enlarging modifications' in the same way as they treat late reservations: seized of a request of one of the parties to enlarge its previous reservation, depositaries consult the rest of the parties to the treaty and reject the new formulation of the reservation if any among the other contracting parties object to it within the established time limit.[149]

71. If there is no reason to examine the possibility of the partial withdrawal of an interpretative declaration which, by definition, 'purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions',[150] there is, to the contrary, no doubt that such a declaration can be modified.[151]

72. In the case of 'simple' interpretative declarations, understood as those declarations which constitute a simple clarification of the sense of the provisions of a treaty but which do not condition the participation of their author to that treaty, modifications to their text can be formulated at any time, save for conventional provisions to the contrary.[152] Thus, in the absence of a conventional provision specifying that the interpretation must be formulated at a specific time, nothing opposes the possibility for the author to modify its declarations at any time, independently of the object of the modification.

73. The same is not true for conditional interpretative declarations. In principle, these declarations may only be formulated (or confirmed) at the time of the expression of consent to be bound by the State in question[153] and late formulations are excluded 'except if none of the other Contracting Parties objects to the late formulation of the conditional interpretative declaration'.[154] All modifications to conditional interpretative declarations, at least if they 'toughen' the position of the declaring State (something which is difficult to determine in certain cases), thus resemble the case of late formulation of declarations, which must not run against the opposition of any of the other contracting parties to the treaty, as in the case of the enlargement of a reservation.

Effects of withdrawal of an objection

74. Introduced *in extremis* in the text of the Convention,[155] paragraph 3(b) of Article 22 is drafted, *mutatis mutandis*, on the basis of paragraph (a) of the same Article concerning reservations: like paragraph (a), on the one hand, it limits the date upon which the withdrawal of an objection becomes operative to the date upon which the interested State—in this case, the reserving State—is notified of the withdrawal and, on the other hand, it is silent on the matter of the effects of the withdrawal.

[149] See eg the procedure followed after the modification formulated in 1995 by Finland to its original reservation (of 1985) to the 1973 Annex to the Protocol on Road Markings, Additional to the European Agreement Supplementing the 1968 Convention on Road Signs and Signals, in MTDSG, *supra* n 67, ch. XI.B.25, fn 4. See also the reaction of Germany to the modification formulated in 1999 by the government of the Maldives to the reservations formulated at the time of their accession (in 1993) to the Convention on the Elimination of All Forms of Disctimination against Women, in ibid, ch. IV.8, fn 38.

[150] Cf guideline 1.2 of the Guide to Practice on Reservations to Treaties of the ILC, *YILC*, 1999, vol. II, Part Two, p 97.

[151] eg see the modification submitted by Mexico in 1987 to the declaration concerning Art. 16 on the New York Convention on the Taking of Hostages of 17 December 1979, made at the time of its accession in 1987, see MTDSG, *supra* n 67, ch. XVIII.5 (Mexico).

[152] See *supra* para. 28.

[153] Ibid.

[154] Cf guideline 2.4.8 of the Guide to Practice on Reservations to Treaties of the ILC, in Report of the ILC to the General Assembly, *YILC*, 2001, vol. II, Part Two, pp 542–3.

[155] See *supra* para. 15.

75. Bokor-Szegó, on behalf of the Hungarian delegation to the Vienna Conference, who was the author of the amendment at the origin of this provision,[156] explained that:

> if a provision on the withdrawal of reservations was included, it was essential that there should also be a reference to the possibility of withdrawing objections to reservations, particularly since that possibility already existed in practice...[The] new sub-paragraph (b), [made] it clear that the withdrawal of an objection to a reservation became operative only when notice of it had been received by the State which had formulated the reservation concerned; her delegation believed that, whereas the withdrawal of a reservation affected the existing relations between the reserving State and the other parties, withdrawal of an objection directly concerned only the objecting State and reserving State. If the amendment were adopted, the title of article 20 would have to be changed.[157]

76. It ensues from the rule contained in this sub-paragraph that, in view of the impossibility of knowing with certainty the date upon which the reserving State receives notification of the withdrawal of objections to it:

> The withdrawing state, in this case the objecting party, may be at pains to determine when its withdrawal has become effective and when it is still bound by a norm system modified by the reservation.[158]

But this problem also arises in relation to the withdrawal of reservations and it may be considered that the advantages of the solution envisaged take priority over the inconvenience they cause[159]—at all stages, a small period of uncertainty is inevitable for one or other of the protagonists; it is not illogical that this uncertainty should fall on the State which takes the initiative to modify a situation it has created.

77. As maintained by Bowett 'the withdrawal of an objection to a reservation...becomes equivalent to acceptance of the reservation and correspondingly the reservation has full effect'.[160] It can thus be conceived that the withdrawal of an objection concerns a 'specific form of acceptance of the reservation'.[161] But this deferred acceptance has no less complex and variable effects depending on the characteristics of the objection withdrawn:[162]

- if the objection is not accompanied by the express declaration envisaged in Article 20, paragraph 4(b) of the Convention, the reservation produces its 'normal' effects, as provided for in paragraph 3 of Article 21;
- if the objection was 'maximum', the treaty enters into force between the two parties and the reservation produces its full effects, in accordance with Article 21;
- if the objection constitutes a cause preventing the entry into force of the treaty among all the contracting parties, in accordance with Article 20(2), or only in respect of the reserving State, in accordance with Article 20(4),[163] then the treaty enters into force between them (and the reservation produces all its effects); and finally

[156] A/CONF.39/L.18, *supra* n 31.

[157] Vienna Conference on the Law of Treaties, 2nd session, 11th plenary meeting, 30 April 1969, pp 36–7, para. 14. The Hungarian amendment was adopted with 92 votes in favour, 0 against, and 3 abstentions, ibid, p 38, para. 36.

[158] F. Horn, *supra* n 2, p 225.

[159] See *supra* para. 40.

[160] *Supra* n 104, p 88; in the same sense L. Migliorino, *supra* n 3, p 329.

[161] R. Szafarz, *supra* n 46, p 314.

[162] In this sense, R. Szafarz, *supra* n 46, p 314; L Migliorino, *supra* n 3, p 329.

[163] See the commentary on Art. 20.

- it can be maintained that, if the objection was founded on one of the causes of invalidity of the reservation listed in Article 19, the situation remains unchanged[164]—at least if the cause in question is proved to exist.

78. It cannot be excluded that the withdrawal of an objection could only be partial.[165] It could be so in two ways:

- First, a State could transform a 'maximum' objection into a 'normal' objection. In this case, the treaty enters into force between the two States, but the objection produces the effects established in Article 23(3).[166]
- Second, nothing seems to oppose a State from 'limiting' the content of its objection (by accepting certain aspects of a reservation, capable of being so decomposed) while maintaining it. In this case, the relationship between the two States is regulated by the newly formulated objection.

79. In the absence of any significant practice[167] and, in any case, of any disagreements, it is difficult to be too categorical in relation to the effects of the withdrawal of an objection, a matter not regulated by Article 22(3)(a). These effects, nonetheless, result logically from the global system of Articles 19 to 21 of the Convention, as has been noted:

> The lack of provisions regulating...the effects of the withdrawal of reservations or objections constitute a loophole in the Convention, although, on the other hand, one could argue that relevant rules are implicitly contained in the provision[s] of the Convention.[168]

80. When it adopted guideline 2.7.4 of its Guide to Practice (Effect on reservation of withdrawal of an objection), the ILC commented that:

> owing to the complexity of the effects of the withdrawal of an objection, it would be better to regard the withdrawal of an objection to a reservation as being equivalent to an acceptance and to consider that a State that has withdrawn its objection must be considered to have accepted the reservation,

thus implicitly referring 'to acceptances and their effects'.[169]

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[164] See the commentary on Art. 19.

[165] See guidelines 2.7.7 (Partial withdrawal of an objection) and 2.7.8 (Effect of a partial withdrawal of an objection) and their commentaries in Report of the ILC to the General Assembly, A/63/10, pp 237–41.

[166] In this sense, R. Szafarz, *supra* n 46, p 314; L Migliorino, *supra* n 3, p 329.

[167] F. Horn, in discussing certain cases (*supra* n 2, pp 226–8), considers that only the case of the withdrawal by Cuba in 1982 of objections made by the regime of Batista in 1953 to Arts IV and IX of the Genocide Convention (see MTDSG, *supra* n 67, ch. IV.1, fn 7) constitutes a clear example of the withdrawal of an objection; the effects of these acts seem to be more symbolic than real.

[168] R. Szafarz, *supra* n 46, p 314.

[169] Report of the ILC to the General Assembly, A/63/10, p 233, para. 4 of the commentary on guideline 2.7.4. On the effects of an acceptance, see the commentary on Art. 21 in this work.

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