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**DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS SIXTIETH SESSION**

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**CHAPTER VI**

**RESERVATIONS TO TREATIES**

**Addendum**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
C.2. Text of the draft guidelines and commentaries thereto adopted by the Commission at its sixtieth session ( <i>continued</i> ) .....		

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\* Reissued for technical reasons.

**C.2. Text of the draft guidelines and commentaries thereto adopted  
by the Commission at its sixtieth session (*continued*)**

**2.7 Withdrawal and modification of objections to reservations**

**Commentary**

(1) The question of the withdrawal of objections to reservations, like that of the withdrawal of reservations, is addressed only very cursorily in the Vienna Conventions.<sup>1</sup> There are merely some indications as to how objections may be withdrawn and when such withdrawals become operative. The modification of objections is not addressed at all.

(2) Article 22, paragraphs 2 and 3, of the 1986 Vienna Convention provides as follows:

“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 Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.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) [...]

(b) the withdrawal of an objection to a reservation becomes operative in relation to another contracting State or international organization only when notice of it has been received by that State.”

Article 23, paragraph 4, stipulates how objections may be withdrawn:

“The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.”

(3) The *travaux préparatoires* of the Vienna Conventions are equally succinct on the withdrawal of objections. The question is not dealt with at all in the work of the early special rapporteurs; this is hardly surprising, given their advocacy of the traditional theory of unanimity, which logically precluded the possibility of an objection being withdrawn. Just as logically, it

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<sup>1</sup> Especially concerning the effects of the withdrawal of reservations. See R. Szafarz, “Reservations to multilateral treaties”, *Polish Yearbook of International Law*, 1970, p. 314.

was the first report by Sir Humphrey Waldock, who favoured the flexible system, which contained the first proposal for a provision concerning the withdrawal of objections to reservations. He proposed the following text for draft article 19, paragraph 5:

“A State which has lodged an objection to a reservation shall be free to withdraw it unilaterally, either in whole or in part, at any time. Withdrawal of the objection shall be effected by written notification to the depositary of the instruments relating to the treaty, and failing any such depositary, to every State which is or is entitled to become a party to the treaty.”<sup>2</sup>

After major reworking of the provisions on the form and procedure relating to reservations and objections, this draft article - which simply reiterated *mutatis mutandis* the similar provision on the withdrawal of a reservation<sup>3</sup> - was abandoned; the reasons for this are not clear from the Commission's work. No such provision is to be found in either the text adopted on first reading or in the Commission's final draft.

(4) It was only during the Vienna Conference that the issue of the withdrawal of objections was reintroduced into the text of articles 22 and 23, based on a Hungarian amendment<sup>4</sup>

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<sup>2</sup> *Yearbook ... 1962*, p. 62.

<sup>3</sup> Draft article 17, paragraph 6, provided as follows: “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. Withdrawal of the reservation shall be effected by written notification to the depositary of instruments relating to the treaty and, failing any such depositary, to every State which is or is entitled to become a party to the treaty” (*ibid.*, p. 61). The similarity between the two texts was highlighted by Sir Humphrey Waldock, who considered in the commentary on draft article 19, paragraph 5, that the latter provision reflected paragraph 6 of draft article 17 and “[did] not therefore need further explanation” (*ibid.*, p. 68, paragraph (22) of the commentary).

<sup>4</sup> A/CONF.39/L.18, in *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969, Documents of the Conference* (A/CONF.39/11/Add.2), p. 267. The Hungarian amendment was adopted, with a slight modification, by 98 votes to none (*United Nations Conference on the Law of Treaties, Official Records, Second Session, Vienna, 9 April-22 May 1969, Summary records of the plenary meetings* (A/CONF.39/11/Add.1), eleventh plenary meeting, 30 April 1969, para. 41).

which realigned the procedure for the withdrawal of objections with that of withdrawal of reservations. As Ms. Bokor-Szegó explained on behalf of the Hungarian delegation:

“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.”<sup>5</sup>

The representative of Italy at the Conference also argued in favour of aligning the procedure for the withdrawal of an objection to a reservation with that for the withdrawal of a reservation:

“The relation between a reservation and an objection to a reservation was the same as that between a claim and a counter-claim. The extinction of a claim, or the withdrawal of a reservation, was counter-balanced by the extinction of a counter-claim or the withdrawal of an objection to a reservation, which was equally a diplomatic and legal procedural stage in treaty-making.”<sup>6</sup>

(5) However, there is virtually no State practice in this area. F. Horn could only identify one example of a clear, definite withdrawal of an objection.<sup>7</sup> In 1982 the Cuban Government notified the Secretary-General of the withdrawal of objections it had made when ratifying the Convention on the Prevention and Punishment of the Crime of Genocide with respect to the reservations to articles IX and XII formulated by several socialist States.<sup>8</sup>

(9) Although the provisions of the Vienna Convention do not go into detail on the issue of withdrawal of objections, it is clear from the *travaux préparatoires* that, in principle, the withdrawal of objections ought to follow the same rules as the withdrawal of reservations, just as

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<sup>5</sup> *Ibid.*, para. 14.

<sup>6</sup> *Ibid.*, para. 27.

<sup>7</sup> Frank Horn, *Reservations and Interpretative Declarations to Multilateral Treaties* (T.M.C. Asser Institute, The Hague, 1988), p. 227.

<sup>8</sup> *Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 2006* (ST/LEG/SER.E/25), vol. I, p. 134, note 30 (chap. IV.1).

the formulation of objections follows the same rules as the formulation of reservations.<sup>9</sup> To make the relevant provisions clear and specific, the Commission based itself on the draft guidelines already adopted on the withdrawal (and modification) of reservations,<sup>10</sup> making the necessary changes to take account of the specific nature of objections. However, this should not be seen in any way as an attempt to revive the theory of parallelism of forms;<sup>11</sup> it is not a matter of aligning the procedure for the withdrawal of objections with the procedure for their formulation, but of applying the same rules to the withdrawal of an objection as those applicable to the withdrawal of a reservation. The two acts, of course, have different effects on the life of the treaty and differ in their nature and their addressees. Nevertheless, they are similar enough to be governed by comparable formal systems and procedures, as was suggested during the *travaux préparatoires* of the 1969 Vienna Convention.

(7) Like those relating to the withdrawal and modification of reservations, the draft guidelines contained in this section concern, respectively: the form and procedure for withdrawal; the effects of withdrawal; the time at which withdrawal of the objection produces those effects; partial withdrawal; and the possible widening of the scope of the objection.

### **2.7.1 Withdrawal of objections to reservations**

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

#### **Commentary**

(1) The question of the possibility of withdrawing an objection and the time at which it is withdrawn is answered in the Vienna Conventions, in particular in article 22, paragraph 2.<sup>12</sup> Neither the possibility of withdrawing an objection at any time nor the time at which it may be withdrawn require further elaboration, and the provisions of article 22, paragraph 2, of the

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<sup>9</sup> See the commentary to draft guideline 2.6.9, paragraphs (1) to (6).

<sup>10</sup> Draft guidelines 2.5.1 to 2.5.11. For the relevant texts and commentaries, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), pp. 183-188.

<sup>11</sup> See *ibid.*, pp. 212-213, paragraph (6) of the commentary to draft guideline 2.5.4.

<sup>12</sup> See paragraph (2) of the introductory commentary to section 2.7.

Vienna Conventions are themselves sufficient. Moreover, there is virtually no State practice in this area. Draft guideline 2.7.1 thus simply reproduces the text of the Vienna Conventions.

(2) While in principle it would be prudent to align the provisions relating to the withdrawal of objections with those relating to the withdrawal of reservations,<sup>13</sup> it must be noted that there is a significant difference in the wording of paragraph 1 (relating to the withdrawal of reservations) and that of paragraph 2 (relating to the withdrawal of objections) of article 22: whereas paragraph 1 is careful to state, with regard to a reservation, that “the consent of a State which has accepted the reservation is not required for its withdrawal”,<sup>14</sup> paragraph 2 does not make the same specification as far as objections are concerned. This difference in wording is logical: in the latter case, the purely unilateral character of the withdrawal is self-evident. This is in fact why the part of the Hungarian amendment,<sup>15</sup> which would have brought the wording of paragraph 2 into line with that of paragraph 1, was set aside at the request of the British delegation,

“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”.<sup>16</sup>

This is a convincing rationale for the different wording of the two provisions, which does not need to be revisited.

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<sup>13</sup> See *ibid.*, *passim*.

<sup>14</sup> On this point, see draft guideline 2.5.1 and the commentary thereto, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, pp. 183-188.

<sup>15</sup> A/CONF.39/L.18, in *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969, Documents of the Conference (A/CONF.39/11/Add.2)*, p. 267. This amendment resulted in the inclusion of paragraph 2 in article 23 (see paragraph (4) of the introductory commentary to section 2.7 above).

<sup>16</sup> *United Nations Conference on the Law of Treaties, Official Records, Second Session, Vienna, 9 April-22 May 1969, Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, p. 38, para. 31.

### **2.7.2 Form of withdrawal**

The withdrawal of an objection to a reservation must be formulated in writing.

#### **Commentary**

(1) The answer to the question of the form the withdrawal of an objection should take is likewise to be found in the Vienna Conventions, in article 23, paragraph 4.<sup>17</sup> The requirement that it should be written does not call for any lengthy explanations, and the rules of the Vienna Conventions are adequate in themselves: while the rule of parallel forms is not an absolute principle in international law,<sup>18</sup> it is certainly reasonable to require a certain degree of formality for the withdrawal of objections, which, like reservations themselves, must be made in writing.<sup>19</sup> A verbal withdrawal would entail considerable uncertainty, which would not necessarily be limited to the bilateral relations between the reserving State or organization and the author of the initial objection.<sup>20</sup>

(2) Draft guideline 2.7.2 now reproduces the text of article 23, paragraph 4, of both the 1969 and 1986 Vienna Conventions, which have identical wording.

(3) The form of a withdrawal of an objection to a reservation is thus identical to the form of a withdrawal to a reservation.

### **2.7.3 Formulation and communication of the withdrawal of objections to reservations**

Guidelines 2.5.4, 2.5.5 and 2.5.6 are applicable *mutatis mutandis* to the withdrawal of objections to reservations.

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<sup>17</sup> See paragraph (2) of the introductory commentary to section 2.7.

<sup>18</sup> See paragraph (6) of the commentary to draft guideline 2.5.4, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), pp. 212-213.

<sup>19</sup> See paragraph (3) of the commentary to draft guideline 2.5.2, *ibid.*, p. 202.

<sup>20</sup> Given that the withdrawal of an objection is related to an acceptance of a reservation, it might, in certain circumstances, lead to the entry into force of the treaty *vis-à-vis* the reserving State or organization.

### Commentary

(1) None of the provisions contained in either the 1969 or the 1986 Vienna Conventions is useful or specific with regard to questions relating to the formulation and communication of a withdrawal. However, it is abundantly clear from the *travaux préparatoires* of the 1969 Convention<sup>21</sup> that, as in the case of the formulation of objections and the formulation of reservations,<sup>22</sup> the procedure to be followed in withdrawing unilateral declarations must be identical to that followed when withdrawing a reservation.

(2) It therefore seemed prudent to the Commission simply to take note, within the framework of the Guide to Practice, of this procedural parallelism between the withdrawal of a reservation and the withdrawal of an objection, which holds for the authority competent to make the withdrawal at the international level and the consequences (or, rather, the absence of consequences) of the violation of the rules of internal law at the time of formulation and those of notification and communication of the withdrawal. It would appear that they can be transposed *mutatis mutandis* to the withdrawal of objections. Rather than reproduce draft guidelines 2.5.4 (Formulation of the withdrawal of a reservation at the international level),<sup>23</sup> 2.5.5 (Absence of consequences at the international level of the violation of internal rules regarding the withdrawal of reservations)<sup>24</sup> and 2.5.6 (Communication of withdrawal of a reservation),<sup>25</sup> with the last of these itself referring back to the draft guidelines concerning the communication of reservations

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<sup>21</sup> See paragraphs (3) to (6) of the introductory commentary to section 2.7 above.

<sup>22</sup> See draft guideline 2.6.9 and the commentary thereto, above.

<sup>23</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, pp. 184-185 and pp. 210-218.

<sup>24</sup> *Ibid.*, p. 185 and pp. 219-221.

<sup>25</sup> *Ibid.*, p. 185 and pp. 221-226.



and the role of the depositary; by merely replacing the word “reservation” with the word “objection” in the text, the Commission considered it preferable to refer to all of these draft guidelines,<sup>26</sup> which apply *mutatis mutandis* to objections.

#### **2.7.4 Effect on reservation of withdrawal of an objection**

A State or an international organization that withdraws an objection formulated to a reservation is considered to have accepted that reservation.

#### **Commentary**

(1) As it did with the withdrawal of reservations,<sup>27</sup> the Commission considered the effects of the withdrawal of an objection in the part devoted to the procedure for withdrawal. However, the question proved to be infinitely more complex: whereas withdrawing a reservation simply restores the integrity of the treaty in its relations between the author of the reservation and the other parties, the effects of withdrawing an objection are likely to be manifold.

(2) Without doubt, a State or an international organization that withdraws its objection to a reservation must be considered to have accepted the reservation. This follows implicitly from the presumption of article 20, paragraph 5, of the Vienna Convention, which considers the lack of an objection by a State or an international organization to be an acceptance. Professor Bowett also asserts that “the withdrawal of an objection to a reservation ... becomes equivalent to acceptance of the reservation”.<sup>28</sup>

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<sup>26</sup> The Commission proceeded in a similar manner with draft guidelines 1.5.2 (which refers back to draft guidelines 1.2 and 1.2.1), 2.4.3 (which refers back to draft guidelines 1.2.1, 2.4.6 and 2.4.7) and, even more obviously, 2.5.6 (which refers back to draft guidelines 2.1.5, 2.1.6 and 2.1.7) and 2.6.9 (which refers back to draft guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7).

<sup>27</sup> See draft guideline 2.5.7 (Effect of withdrawal of a reservation) and the commentary thereto, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, p. 186 and pp. 227-231.

<sup>28</sup> D. Bowett, “Reservations to non-restricted multilateral treaties”, *British Yearbook of International Law*, 1976-1977, p. 88. See also R. Szafarz, *op. cit.*, p. 314, and L. Migliorino, “La revoca di riserve e di obiezioni a riserve”, *Rivista di Diritto internazionale*, 1994, p. 329.

(3) Yet it is not evident that with the withdrawal of an objection “the reservation has full effect”.<sup>29</sup> As it happens, the effects of the withdrawal of an objection or of the resulting “delayed” acceptance can be manifold and complex, depending on factors relating not only to the nature and validity of the reservation, but also - and above all - to the characteristics of the objection itself:<sup>30</sup>

- If the objection was not accompanied by the definitive declaration provided for in article 20, paragraph 4 (b), of the Convention, the reservation produces its “normal” effects as provided for in article 21, paragraph 1;
- If the objection was a “maximum-effect” objection, the treaty enters into effect between the two parties and the reservation produces its full effects in accordance with the provisions of article 21;
- If the objection was a cause precluding the treaty from entering into force between all parties pursuant to article 20, paragraph 2, or with regard to the reserving State in application of article 20, paragraph 4, the treaty enters into force (and the reservation produces its effects).

This last situation in particular shows that the effects of the withdrawal of an objection not only relate to whether the reservation is applicable or not, but may also have an impact on the actual entry into force of the treaty.<sup>31</sup> The Commission nevertheless considered it preferable to restrict draft guideline 2.7.4 to the effects of an objection “on the reservation” and adopted the title of this draft guideline for that reason.

(4) Not only would it seem difficult to adopt a provision covering all the effects of the withdrawal of an objection, owing to the complexity of the question, but doing so might also

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<sup>29</sup> D. Bowett, *op. cit.*, p. 88.

<sup>30</sup> In this connection see R. Szafarz, *op. cit.*, p. 314, and L. Migliorino, *op. cit.*, p. 329.

<sup>31</sup> See paragraph (3) of the commentary to draft guideline 2.7.5 below.

prejudge the question of the effects of a reservation and of the acceptance of a reservation. The Commission therefore considered 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, without examining, at the present stage, the nature and consistency of the effects of such an acceptance. Such a provision implicitly refers to acceptances and their effects. The question of when these effects are felt is the subject of draft guideline 2.7.5.

### **2.7.5 Effective date of withdrawal of an objection**

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

#### **Commentary**

(1) The Vienna Conventions contain a very clear provision concerning the time at which the withdrawal of an objection becomes operative. Article 22, paragraph 3 (b), of the 1986 Convention states:

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

(a) ...

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

(2) This provision differs from the corresponding rule on the effective date of withdrawal of a reservation in that, in the latter case, the withdrawal becomes operative “in relation to another contracting State only when notice of it has been received by that State”. The reasons for this difference in wording can easily be understood. Whereas withdrawing a reservation hypothetically modifies the content of treaty obligations between the reserving State or international organization and all the other contracting States or organizations, withdrawing an objection to a reservation modifies in principle only the bilateral treaty relationship

between the reserving State or organization and the objecting State or organization.

Ms. Bokor-Szegó, the representative of Hungary at the 1969 Vienna Conference, explained the difference in the wording between subparagraph (a) and the subparagraph (b) proposed by her delegation as follows:<sup>32</sup>

“Withdrawal of an objection directly concerned only the objecting State and the reserving State.”<sup>33</sup>

(3) However, the effects of withdrawing an objection to a reservation may go beyond this strictly bilateral relationship between the reserving party and the objecting party. All depends on the content and scale of the objection: the result of its withdrawal may even be that a treaty enters into force between all the States and international organizations that ratified it. This occurs in particular when an objection has prevented a treaty from entering into force between the parties to a treaty with limited participation (article 20, paragraph 2, of the Vienna Conventions) or, a less likely scenario, when the withdrawal of an objection allows the reserving State or international organization to be a party to the treaty in question and thus brings the number of parties up to that required for the treaty’s entry into force. Accordingly, it could be questioned whether it is legitimate that the effective date of withdrawal of an objection to a reservation should depend solely on when notice of that withdrawal is given to the reserving State, which is certainly the chief interested party but not necessarily the only one. In the above-mentioned situations, limiting the requirement to give notice in this way means that the other contracting States or organizations are not in a position to determine the exact date when the treaty enters into force.

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<sup>32</sup> See paragraph (4) of the introductory commentary to section 2.7 above.

<sup>33</sup> *Summary records* (A/CONF.39/11/Add.1), *Official Records of the United Nations Conference on the Law of Treaties, Second Session, Vienna, 9 April-22 May 1969, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.39/11/Add.1), 11th plenary meeting, 30 April 1969, pp. 36-37, para. 14.

(4) This disadvantage appears to be more theoretical than real, however, since the withdrawal of an objection must be communicated not only to the reserving State but also to all the States and organizations concerned or to the depositary of the treaty, who will transmit the communication.<sup>34</sup>

(5) The other disadvantages of the rule setting the effective date at notification of the withdrawal were presented in the context of the withdrawal of reservations in the commentary to draft guideline 2.5.8 (Effective date of withdrawal of a reservation).<sup>35</sup> They concern the immediacy of that effect, on the one hand, and, on the other, the uncertainty facing the author of the withdrawal as to the date notification is received by the State or international organization concerned. The same considerations apply to the withdrawal of an objection, but there they are less problematic. As far as the immediacy of the effect of the withdrawal is concerned, it should be borne in mind that the chief interested party is the author of the reservation, who would like the reservation to produce all its effects on another contracting party: the quicker the objection is withdrawn, the better it is from the author's perspective. It is the author of the objection, meanwhile, who determines this notification and who must make the necessary preparations (including the preparation of domestic law) to ensure that the withdrawal produces all its effects (and, in particular, that the reservation is applicable in the relations between the two States).

(6) In view of these considerations and in keeping with the Commission's practice, it does not seem necessary to modify the rule set forth in article 22, paragraph 3 (b), of the Vienna Convention. Taking into account the recent practice of the principal depositaries of multilateral treaties and, in particular, that of the Secretary-General of the United Nations,<sup>36</sup> who use modern,

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<sup>34</sup> This follows from draft guideline 2.7.3 and of draft guidelines 2.5.6 (Communication of withdrawal of a reservation) and 2.1.6 (Procedure for communication of reservation), to which it refers. Consequently, the withdrawal of the objection must be communicated "to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty".

<sup>35</sup> See the commentary to draft guideline 2.5.8 (Effective date of withdrawal of a reservation), *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, pp. 231-239.

<sup>36</sup> See paragraphs (14) to (18) of the commentary to draft guideline 2.1.6 (Procedure for communication of reservations), *Official Records of the General Assembly, Fifty-seventh*

rapid means of communication to transmit notifications, States and international organizations other than the reserving State or organization should normally receive the notification at the same time as the directly interested party. Simply reproducing this provision of the Vienna Convention would thus seem justified.

(7) In accordance with the practice followed by the Commission, draft guideline 2.7.5 is thus identical to article 22, paragraph 3 (b), of the 1986 Vienna Convention, which is more comprehensive than the corresponding 1969 provision in that it takes into account international organizations, without altering the meaning in any way. It is for this very reason that, notwithstanding the view of some of its members, the Commission decided not to replace the phrase “becomes operative” in the English text with the phrase “takes effect”, which would seem to mean the same thing.<sup>37</sup> This linguistic problem arises only in the English version of the text.

#### **2.7.6 Cases in which an objecting State or international organization may unilaterally set the effective date of withdrawal of an objection to a reservation**

The withdrawal of an objection becomes operative on the date set by its author where that date is later than the date on which the reserving State or international organization received notification of it.

#### **Commentary**

(1) For the reasons given in the commentary to draft guideline 2.5.9 (Cases in which a reserving State may unilaterally set the effective date of withdrawal of a reservation),<sup>38</sup> the Commission felt it necessary to adopt a draft guideline that was analogous in order to cover the

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*Session, Supplement No. 10 (A/57/10)*, pp. 99-100 and 101-102. See also Palitha T.B. Kohona, “Some notable developments in the practice of the United Nations Secretary-General as depository of multilateral treaties: reservations and declarations”, *American Journal of International Law*, vol. 99, 2005, pp. 433-450, and “Reservations: discussion of recent developments in the practice of the Secretary-General of the United Nations as depository of multilateral treaties”, *Georgia Journal of International and Comparative Law*, vol. 33, 2004-2005, pp. 415-450.

<sup>37</sup> See also paragraph (3) of the commentary to draft guideline 2.7.6 and paragraph (5) of the commentary to draft guideline 2.7.7 below.

<sup>38</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, pp. 242-244.

situation in which the objecting State or international organization unilaterally sets the effective date of withdrawal of its objection, without, however, entirely reproducing the former draft guideline.

(2) In fact, in the case where the author of the objection decides to set as the effective date of withdrawal of its objection a date earlier than that on which the reserving State received notification of the withdrawal, a situation corresponding *mutatis mutandis* to subparagraph (b) of draft guideline 2.5.9,<sup>39</sup> the reserving State or international organization is placed in a particularly awkward position. The State or international organization that has withdrawn its objection is considered as having accepted the reservation, and may therefore, in accordance with the provisions of article 21, paragraph 1, invoke the effect of the reservation on a reciprocal basis; the reserving State or international organization would then have incurred international obligations without being aware of it, and this could seriously undermine legal security in treaty relations. It is for this reason that the commission decided quite simply to rule out this possibility and to omit it from draft guideline 2.7.9. As a result, only a date later than the date of notification may be set by an objecting State or international organization when withdrawing an objection.

(3) In the English version of draft guideline 2.7.6, the phrase “becomes operative”, which certain English-speaking members of the Commission found awkward, was nevertheless retained by the Commission because it is used in article 22, paragraph 3 (b), of the Vienna Conventions and also in draft guideline 2.7.5.<sup>40</sup> The phrase simply means “takes effect”. This linguistic problem does not arise in any of the other language versions.

### **2.7.7 Partial withdrawal of an objection**

Unless the treaty provides otherwise, a State or an international organization may partially withdraw an objection to a reservation. The partial withdrawal of an objection is subject to the same formal and procedural rules as a complete withdrawal and becomes operative on the same conditions.

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<sup>39</sup> *Ibid.*, pp. 243-244, paragraphs (4) and (5) of the commentary to draft guideline 2.5.9.

<sup>40</sup> See paragraph (7) of the commentary to draft guideline 2.7.5 above and paragraph (5) of the commentary to draft guideline 2.7.7 below.

### Commentary

(1) As with the withdrawal of reservations, it is quite conceivable that a State (or international organization) might modify an objection to a reservation by partially withdrawing it. If a State or an international organization can withdraw its objection to a reservation at any time, it is hard to see why it could not simply reduce its scope. Two quite different situations illustrate this point:

- In the first place, a State might change an objection with “maximum”<sup>41</sup> (or even “super-maximum”<sup>42</sup>) or intermediate<sup>43</sup> effect into a “normal” or “simple” objection;<sup>44</sup> in such cases, the modified objection will produce the effects foreseen in article 23, paragraph 3. Moving from an objection with maximum effect to a simple objection or one with intermediate effect also brings about the entry into force of the treaty as between the author of the reservation and the author of the objection;<sup>45</sup>

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<sup>41</sup> An objection with “maximum” effect is an objection in which its author expresses the intention of preventing the treaty from entering into force as between itself and the author of the reservation in accordance with the provisions of article 20, paragraph 4 (b), of the Vienna Conventions. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), p. 199, paragraph (22) of the commentary to draft guideline 2.6.1.

<sup>42</sup> An objection with “super-maximum” effect states not only that the reservation to which the objection is made is not valid, but also that, consequently, the treaty applies *ipso facto* as a whole in the relations between the two States. See *ibid.*, p. 200, paragraph (24) of the commentary to draft guideline 2.6.1.

<sup>43</sup> By making an objection with “intermediate” effect, a State expresses the intention to be associated with the author of the reservation but considers that the exclusion of treaty relations should go beyond what is provided for in article 21, paragraph 3, of the Vienna Conventions. See *ibid.*, p. 199, paragraph (23) of the commentary to draft guideline 2.6.1.

<sup>44</sup> “Normal” or “simple” objections are those with “minimum” effect, as provided for in article 21, paragraph 3, of the Vienna Conventions. See *ibid.*, p. 199, paragraph (22) of the commentary to draft guideline 2.6.1.

<sup>45</sup> If, on the contrary, an objection with “super-maximum” effect were abandoned and replaced by an objection with maximum effect, the treaty would no longer be in force between the States or international organizations concerned; even if an objection with super-maximum effect is held to be valid, that would enlarge the scope of the objection, which is not possible (see draft guideline 2.7.9 and the commentary thereto below).



- In the second place, it would appear that there is nothing to prevent a State from “limiting” the actual content of its objection (by accepting certain aspects of reservations that lend themselves to being separated out in such a way)<sup>46</sup> while maintaining its principle; in this case, the relations between the two States are governed by the new formulation of the objection.

(2) The Commission has no knowledge of a case in State practice involving such a partial withdrawal of an objection. This does not, however, appear to be sufficient grounds for ruling out such a hypothesis. In his first report, Sir Humphrey Waldock expressly provided for the possibility of a partial withdrawal of this kind. Paragraph 5 of draft article 19, which was devoted entirely to objections but subsequently disappeared in the light of changes made to the structure of the draft articles, states:

“A State which has lodged an objection to a reservation shall be free to withdraw it unilaterally, either in whole or *in part*, at any time.”<sup>47</sup>

The commentaries to this provision<sup>48</sup> presented by the Special Rapporteur offer no explanation of the reasons why he proposed it. Nonetheless, it is noteworthy that this draft article 19, paragraph 5, should again be identical to the corresponding proposal concerning the withdrawal of reservations,<sup>49</sup> as was made explicit in Sir Humphrey’s commentary.<sup>50</sup>

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<sup>46</sup> In some cases, the question of whether, in the latter hypothesis, it is really possible to speak of a “limitation” of this kind is debatable - but neither more nor less than the question of whether modifying a reservation is tantamount to its partial withdrawal.

<sup>47</sup> *Yearbook ... 1962*, vol. II, p. 62 (italics added).

<sup>48</sup> *Ibid.*, p. 68.

<sup>49</sup> See draft article 17, paragraph 6, *ibid.*, p. 61.

<sup>50</sup> *Ibid.*, p. 68.

(3) The arguments which led the Commission to allow for the possibility of partial withdrawal of reservations<sup>51</sup> may be transposed *mutatis mutandis* to partial withdrawal of objections, even though in this case the result is not to ensure a more complete application of the provision of the treaty but, on the contrary, to give full effect (or greater effect) to a reservation. Consequently, just as partial withdrawal of a reservation follows the rules applicable to full withdrawal,<sup>52</sup> it would seem that the procedure for the partial withdrawal of an objection should be modelled on that of its total withdrawal. Draft article 2.7.7 has been formulated to reflect this.

(4) Given the problems inherent in determining the effects of total withdrawal of an objection in the abstract,<sup>53</sup> the Commission felt that it was neither possible nor necessary to define the term “partial withdrawal” any further. It was enough to say that partial withdrawal is necessarily something less than full withdrawal and that it limits the legal effects of the objection *vis-à-vis* the reservation without wiping them out entirely: as the above examples show, the reservation is not simply accepted; rather, the objecting State or international organization merely wishes to alter slightly the effects of an objection which, in the main, is maintained.

(5) In the English version of draft guideline 2.7.7, the phrase “becomes operative”, which is perhaps awkward, was retained by the Commission on account of its use in article 22, paragraph 3 (b), of the Vienna Conventions and also in draft guidelines 2.7.5 and 2.7.6.<sup>54</sup> The phrase simply means “takes effect”. This linguistic problem does not arise in any of the other language versions.

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<sup>51</sup> See the commentary to draft guideline 2.5.10 (Partial withdrawal of a reservation), *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paragraphs (11) and (12) of the commentary.

<sup>52</sup> See the second paragraph of draft guideline 2.5.10 (Partial withdrawal of a reservation): “The partial withdrawal of a reservation is subject to the same formal and procedural rules as a total withdrawal and takes effect on the same conditions.”

<sup>53</sup> See the commentary to draft guideline 2.7.4 above.

<sup>54</sup> See paragraph (7) of the commentary to draft guideline 2.7.5 and paragraph (3) of the commentary to draft guideline 2.7.6.

### 2.7.8 Effect of a partial withdrawal of an objection

The partial withdrawal modifies the legal effects of the objection on the treaty relations between the author of the objection and the author of the reservation to the extent of the new formulation of the objection.

#### Commentary

(1) It is difficult to determine *in abstracto* what effects are produced by the withdrawal of an objection and even more difficult to say with certainty what concrete effect a partial withdrawal of an objection is likely to produce. In order to cover all possible effects, the Commission wanted to adopt a draft guideline that was sufficiently broad and flexible. It considered that the wording of draft article 2.5.11 concerning the effects of a partial withdrawal of a reservation<sup>55</sup> met this requirement. Consequently, draft guideline 2.7.8 is modelled on the analogous draft guideline dealing with the partial withdrawal of a reservation.

(2) While the text of draft guideline 2.7.8 does not explicitly say so, it is clear that the term “partial withdrawal” implies that by partially withdrawing its objection, the State or international organization that is the author of the objection intends to limit the legal effects of the objection, it being understood that this may prove fruitless if the legal effects of the reservation are already weakened as a result of problems relating to the validity of the reservation.

(3) Even less than in the case of the partial withdrawal of reservations<sup>56</sup> should it be possible for other States or international organizations or for the author of the reservation to react to the partial withdrawal of an objection. The objection itself produces its effects independently of any reaction on the part of the author of the reservation. If States and international organizations can make objections as they see fit, they may similarly withdraw them or limit their legal effects at will.

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<sup>55</sup> See draft guideline 2.5.11 (Effect of a partial withdrawal of a reservation), *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), p. 256.

<sup>56</sup> See the second paragraph of draft guideline 2.5.11, *ibid.*, p. 256.

### 2.7.9 Prohibition against the widening of the scope of an objection to a reservation

A State or international organization which has made an objection to a reservation may widen the scope of that objection during the time period referred to in draft guideline 2.6.13 provided that the widening does not have as an effect the modification of treaty relations between the author of the reservation and the author of the objection.

#### Commentary

(1) Neither the *travaux préparatoires* of the 1969 and 1986 Vienna Conventions nor the text of the Conventions themselves contain any provisions or indications on the question of the widening of the scope of an objection previously made by a State or international organization, and there is no State practice in this area.

(2) In theory it is conceivable that a State or international organization that has already raised an objection to a reservation may wish to widen the scope of its objection, for example by adding the declaration provided for in article 20, paragraph 4 (b) of the Vienna Conventions, thereby transforming it from a simple objection, which does not preclude the entry into force of the treaty as between the objecting and reserving parties, into a qualified objection, which precludes any treaty-based relations between the objecting and reserving parties.

(3) In the view of some Commission members, this example alone demonstrates the problems of legal security that would result from such an approach. They argue that any hint of an intention to widen or enlarge the scope of an objection to a reservation could seriously undermine the status of the treaty in the bilateral relations between the reserving party and the author of the new objection. Since in principle the reserving party does not have the right to respond to an objection, to allow the widening of the scope of an objection would amount to exposing the reserving State to the will of the author of the objection, who could choose to change the treaty relations between the two parties at any time. The lack of State practice suggests that States and international organizations consider that widening the scope of an objection to a reservation is simply not possible.

(4) Other considerations, according to this point of view, support such a conclusion. In its work on reservations, the Commission has already examined the similar issues of the widening

of the scope of a reservation<sup>57</sup> and the widening of the scope of a conditional interpretative declaration.<sup>58</sup> In both cases the widening is understood as the late formulation of a new reservation or a new conditional interpretative declaration.<sup>59</sup> Because of the presumption of article 20, paragraph 5, of the Vienna Conventions, the late formulation of an objection cannot be said to have any legal effect.<sup>60</sup> Any declaration formulated after the end of the prescribed period is no longer considered to be an objection properly speaking but a renunciation of a prior acceptance, without regard for the commitment entered into with the reserving State,<sup>61</sup> and the practice of the Secretary-General as depositary of multilateral treaties bears out this conclusion.<sup>62</sup>

(5) Other Commission members, however, held that a reading of the provisions of the Vienna Conventions do not justify such a categorical solution. Under article 20, paragraph 5, States and international organizations are given a specific time period within which to make their objections, and there is nothing to prevent them from widening or reinforcing their objections during that period; for practical reasons, then, it is appropriate to give States such a period for reflection.

(6) A compromise was nevertheless reached between the two points of view. The Commission was in fact unanimous in considering that the widening of the scope of an objection cannot call into question the very existence of treaty reactions between the author of the reservation and the author of the objection. Making a simple objection that does not imply an intention to preclude

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<sup>57</sup> See draft guideline 2.3.5 (Widening of the scope of a reservation) and commentary, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10 (A/59/10)*, p. 260 and pp. 269-274.

<sup>58</sup> See draft guideline 2.4.10 (Limitation and widening of the scope of a conditional interpretative declaration) and the commentary thereto, *ibid.*, pp. 263 and 277-278.

<sup>59</sup> See paragraph (1) of the commentary to draft guideline 2.3.5 (Widening of the scope of a reservation), *ibid.*, p. 269, and paragraph (1) of the commentary to draft guideline 2.4.10 (Limitation and widening of the scope of a conditional interpretative declaration), *ibid.*, p. 277.

<sup>60</sup> See also draft guideline 2.6.15 above.

<sup>61</sup> See the commentary to draft guideline 2.6.15 above.

<sup>62</sup> *Ibid.*, paragraph (4) of the commentary.

the entry into force of the treaty between the author of the objection and the author of the reservation may indeed have the immediate effect of establishing treaty relations between the two parties, even before the time period allowed for the formulation of objections has elapsed. To call this *fait accompli* into question by subsequently widening the scope of the objection and accompanying it with a clear expression of intent to preclude the entry into force of the treaty in accordance with article 20, paragraph 4 (b), of the Vienna Convention is inconceivable and seriously undermines legal security.

(7) The draft guideline reflects this compromise. It does not prohibit the widening of objections within the time period prescribed in draft guideline 2.6.13 - which simply reproduces the provision contained in article 20, paragraph 5, of the Vienna Conventions - provided that such widening does not modify treaty relationships. Widening is thus possible if it is done before the expiry of the 12-month period (or any other period stipulated in the treaty) that follows notification of the reservation or before the date on which the State or international organization that made the objection expresses its consent to be bound by the treaty, if it is later and if it does not call into question the very existence of treaty relations acquired subsequently through the formulation of the initial objection.

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