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Chapter IV
Reservations to treaties

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A State or international organization may formulate an objection to a reservation irrespective of the permissibility of the reservation.

(1) It is now well established that a State or an international organization may make an objection to a reservation formulated by another State or another international organization, irrespective of the question of the permissibility of the reservation.[1] Nevertheless, although that freedom is quite extensive,[2] it is not unlimited, and it therefore seems preferable to speak of a "freedom" rather than a "right".[3] For the same reason, the Commission has preferred, despite some contrary opinion, to speak of a "freedom to formulate" rather than a "freedom to make" objections.[4]

(2) Subject to those reservations, the *travaux préparatoires* of the 1969 Vienna Convention leave no doubt as to the discretionary nature of the formulation of objections but are not very enlightening on the question of who may formulate them.[5]

(3) In its 1951 advisory opinion, the International Court of Justice made an analogy between the permissibility of objections and that of reservations. It considered that:

> "The object and purpose of the Convention thus limit both the freedom of making reservations and that of objecting to them. It follows that it is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation. Such is the rule of

[1] As indicated in the commentary to guideline 2.6.1 (*Official Records of the General Assembly, Sixtieth session, Supplement No. 10* (A/60/10), pp. 200–201, para. (25)), this section leaves aside the possible impact of the invalidity of a reservation on the effects of its acceptance or any objection to it. That matter is addressed in section 5 of the fourth part of the Guide to Practice concerning the effects of acceptances of and objections to invalid reservations.

[2] See paras. (6) to (10) below.

[3] Similarly with regard to reservations, see the commentary to draft guideline 3.1 (*Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10, pp. 328 ff, paras. (2) ff). In his first report on the law of treaties, however, Sir Humphrey Waldock mentioned "the right [of any State] to object" (*Yearbook of the International Law Commission, 1962*, vol. II, p. 62). After a lengthy discussion in the Commission on the question of the connection between objections and the compatibility of a reservation with the object and purpose of the treaty (*Yearbook … 1962*, vol. I, 651st–656th meetings, pp. 139–179; see also para. (4) below), this requirement, which was included in draft article 19, paragraph 1 (a), as proposed by the Special Rapporteur, completely disappeared in the text of draft article 18 proposed by the Drafting Committee, which combined draft articles 18 and 19. In this respect, the Special Rapporteur noted that his two drafts "had been considerably reduced in length without, however, leaving out anything of substance" (*ibid*., vol. I, 663rd meeting, p. 223, para. 36). Neither during the debates nor in the later texts submitted to or adopted by the Commission, was the question of the "right" to make objections revisited.

[4] To be specific, there are two cases in which an objection may not be made, the first being where the treaty itself has yet to enter into force, which goes without saying, and the second where the objecting State or international organization intends to become a party but has not yet expressed its definitive consent to be bound; see the eleventh report on reservations to treaties (A/CN.4/574), para. 83.

[5] See guideline 265 and the commentary thereto (*Official Records of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10), pp. 189–193).

> conduct which must guide every State in the appraisal which it must make, individually and from its own standpoint, of the admissibility of any reservation."[6]

(4) Draft article 20, paragraph 2 (b), adopted on first reading by the Commission in 1962 after heated debate,[7] endorsed that position and established a link between the objection and the incompatibility of the reservation with the object and purpose of the treaty, which seemed to be the *sine qua non* for permissibility in both cases. The provision stated:

> "An objection to a reservation by a State which considers it to be incompatible with the object and purpose of the treaty precludes the entry into force of the treaty as between the objecting and the reserving State, unless a contrary intention shall have been expressed by the objecting State."[8]

(5) In response to the comments made by the Australian, Danish and United States Governments,[9] however, the Special Rapporteur reverted to the position taken by the Commission on first reading, omitting the reference to the criterion of compatibility from his proposed draft article 19, paragraph 3 (b).[10] The opposing opinion was nonetheless supported once more by Waldock in the Commission's debates,[11] but that did not prevent the Drafting Committee from once again leaving out any reference to the compatibility criterion – without, however, providing any explanation.[12] In accordance with that position, paragraph 4 (b) of draft article 19, adopted on second reading in 1965, merely provided that "an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State".[13]

(6) Despite the doubts voiced by a number of delegations,[14] the Vienna Conference of 1968–1969 made no further reference to the lack of a connection between objections and the criteria of a reservation's permissibility. In response to a question raised by the Canadian representative, however, the Expert Consultant, Sir Humphrey Waldock, was particularly clear in his support for the position adopted by the Commission:

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[6] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 29 May 1951, I.C.J. Reports 1951*, p. 24.

[7] The criterion of compatibility with the object and purpose of the treaty played a large part in the early debates on reservations (*Yearbook … 1962*, vol. I, 651st–656th meetings). One of the leading advocates of the link between this criterion and reactions to a reservation was Mr. Rosenne, who based his arguments on the advisory opinion of the International Court of Justice (see footnote 6 above) (*Yearbook … 1962*, vol. I, 651st meeting, para. 79).

[8] *Yearbook … 1962*, vol. II, p. 176.

[9] Fourth report on the law of treaties (A/CN.4/177 and Add.1), *Yearbook … 1965*, vol. II, pp. 45–47.

[10] *Ibid*., p. 52, para. 10.

[11] *Yearbook … 1965*, vol. I, 799th meeting, para. 65. See also Mr. Tsuruoka, *ibid*., para. 69. For an opposing view, see Mr. Tunkin, *ibid*., para. 37.

[12] See *Yearbook … 1965*, vol. I, 813th meeting, paras. 30–71 and, in particular, paras. 57–66.

[13] *Yearbook …1965*, vol. II, p. 162.

[14] See, in particular, the United States amendment (A/CONF.39/C.1/L.127 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. 135) and the comments of the United States representative (*Official Records of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March–24 May 1968, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.39/11), Twenty-first meeting, para. 11). See also the critical comments made by Japan (*ibid*., Twenty-first meeting, para. 29), Philippines (*ibid*., para. 58), United Kingdom (*ibid*., para. 74), Switzerland (*ibid*., para. 41), Sweden (*ibid*., Twenty-second meeting, para. 32) and Australia (*ibid*, para. 49).

> "The second question was, where a reservation had not been expressly authorized, and at the same time was not one prohibited under article 16, paragraph (*c*), could a contracting State lodge an objection other than that of incompatibility with the object and purpose of the treaty? The answer was surely Yes. Each contracting State remained *completely free* to decide for itself, in accordance with its own interests, whether or not it would accept the reservation."[15]

(7) On this point, the Vienna regime deviates from the solution adopted by the International Court of Justice in its 1951 advisory opinion,[16] which, in this regard, is certainly outdated and no longer corresponds to current positive law.[17] A State or an international organization has the right to formulate an objection both to a reservation that does not meet the criteria for permissibility and to a reservation that it deems to be unacceptable "in accordance with its own interests", even if it is permissible. In other words, States and international organizations are free to object for any reason whatsoever and that reason may or may not have to do with the impermissibility of the reservation.[18]

(8) This solution is based on the principle of consent, which underlies the reservations regime and indeed all treaty law, as the Court recalled in its 1951 advisory opinion:

> "It is well established that in its treaty relations a State cannot be bound without its consent, and that consequently no reservation can be effective against any State without its agreement thereto."[19]

(9) A State (or an international organization) is, therefore, never bound by treaty obligations[20] that are not in its interests. A State that formulates a reservation is simply proposing a modification of the treaty relations envisaged by the treaty.[21] Conversely, no

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[15] *Summary records* (A/CONF.39/11), cited in footnote 14 above, Twenty-fifth meeting, para. 3 (italics added).

[16] See para. (3) above. See also Massimo Coccia, "Reservations to multilateral treaties on human rights", *California Western International Law Journal*, 1985, No. 1, pp. 8–9; Richard W. Edwards, Jr., "Reservations to treaties", *Michigan Journal of International Law*, 1989, No. 2, p. 397; Liesbeth Lijnzaad, *Reservations to UN-Human Rights Treaties. Ratify and Ruin?* (Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995), p. 51; Karl Zemanek, "Some unresolved questions concerning reservations in the Vienna Convention on the Law of Treaties", *Études en droit international en l'honneur du juge Manfred Lachs* (The Hague/Boston/Lancaster, Martinus Nijhoff Publishers, 1984), p. 333.

[17] It is also unlikely that it reflected the state of positive law in 1951. No one seems to have ever claimed that the freedom to formulate objections in the context of the system of unanimity was subject to the reservation being contrary to the object and purpose of the treaty.

[18] Subject, of course, to the general principles of law which may limit the exercise of the discretionary power of States at the international level and the principle prohibiting abuse of rights.

[19] Opinion cited in footnote 6, above, p. 21. The dissenting judges also stressed this principle in their joint opinion: "The consent of the parties is the basis of treaty obligations. The law governing reservations is only a particular application of this fundamental principle, whether the consent of the parties to a reservation is given in advance of the proposal of the reservation or at the same time or later." (*ibid.*, pp. 31–32). See also the famous dictum of the Permanent Court of International Justice in the case of the *S.S. "Lotus"*: "The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these coexisting independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed." (Judgment of 7 September 1927, *P.C.I.J.*, Series A, No. 10, p. 18). See also A/CN.4/477/Add.1, paras. 97 and 99.

[20] This clearly does not mean that States are not bound by legal obligations emanating from other sources.

[21] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), pp. 330–

State is obliged to accept those modifications – except for those resulting from reservations expressly authorized by the treaty, provided, of course, that they are not contrary to the object and purpose of the treaty.[22] Limiting the right to formulate objections to reservations that are contrary to one of the criteria for permissibility established in article 19 would not only violate the sovereign right to accept or refuse treaty obligations;[23] it would also have the effect of establishing an actual right to make reservations. Such a right, which definitely does not exist in an absolute sense, would contravene the very principle of the sovereign equality of States, since it would allow the reserving State (or international organization) to impose its will unilaterally on the other contracting parties.[24] In practice, this would render the mechanism of acceptances and objections null and void.[25]

(10) It is therefore indisputable that States and international organizations have discretionary freedom to formulate objections to reservations. That is clear from guideline 2.6.1, which defines "objection" in terms of the intent of its author, irrespective of the purpose or permissibility of the reservation to which the objection relates. It follows that the author may exercise that freedom regardless of the permissibility of the reservation; in other words, it may make an objection for any reason, perhaps simply for political reasons or reasons of expediency, without being obliged to explain its reasons[26] – provided, of course, that the objection itself is not contrary to one of the criteria for permissibility.[27]

(11) However, "discretionary" does not mean "arbitrary"[28] and, even though this freedom undoubtedly stems from the power of a party to exercise its own judgement, it is not absolute. Above all, it must be exercised within the limits arising from the procedural and formal constraints that are developed and set out in detail in the guidelines that follow in this section of the Guide to Practice. Thus, for example, it should be emphasized at the outset that a State or international organization that has accepted a reservation no longer has the option of subsequently formulating an objection to the same reservation. This rule derives implicitly from the presumption of acceptance of reservations established in article 20, paragraph 5, of the Vienna Conventions, a presumption spelled out in guideline 2.8.1, which concerns the procedure for acceptances. Moreover, guideline 2.8.12 expressly enunciates the final nature of acceptance.[29]

331, para. (6) of the commentary to guideline 3.1.

[22] Frank Horn, *Reservations and Interpretative Declarations to Multilateral Treaties* (The Hague, T.M.C. Asser Institut, 1988), p. 121; Christian Tomuschat, "Admissibility and legal effects of reservations to multilateral treaties", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 27 (1967), p. 466.

[23] Christian Tomuschat, *ibid*.

[24] See, in this regard, the ninth of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, adopted by the International Law Commission at its fifty-eighth session (*Official Records of the General Assembly, Sixty-first session, Supplement No. 10* (A/61/10), p. 379.

[25] See D. Müller, commentary to article 20, (1969) in Olivier Corten and Pierre Klein (eds.), *Les Conventions de Vienne sur le droit des traités: Commentaire article par article* (Brussels, Bruylant, 2008), p. 837, para. 74. See also the statement made by Mr. Pal at the 653rd meeting of the International Law Commission (*Yearbook ... 1962*, vol. I, p. 153, para. 5).

[26] In this regard, however, see guideline 2.6.10 and the commentary thereto (*Official Records of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10), pp. 203–206.

[27] See guideline 3.4.2 and the commentary thereto in sect. C.2 below.

[28] See, in particular, Stevan Jovanovic, *Restriction des compétences discrétionnaires des États en droit international* (Paris, Pedone, 1988), p. 88 ff, note pp. 90–93; see also Judgement No. 191 of the International Labour Organization Administrative Tribunal in the case of *Ballo v. UNESCO*).

[29] For the text of that guideline and the commentary thereto, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10* (A/64/10), pp. 252–253.

(12) The absence of a link between the permissibility of a reservation and the objection does not, however, fully resolve the question of the permissibility of an objection. Although it is scarcely possible to envisage a situation in which an objection might be incompatible with the object and purpose of the treaty, it goes without saying that the freedom to formulate an objection must be exercised in accordance with the provisions of the Guide to Practice – a point so self-evident that the Commission did not think it was worthwhile to mention it in the text of guideline 2.6.3.

(13) The wording retained also leaves open the question of whether the permissibility of an objection may be challenged on the grounds that it is contrary to a norm of *jus cogens* or another general principle of international law, such as the principle of good faith or the principle of non-discrimination. Some Commission members are of the view that it could, whereas others consider the hypothesis inconceivable, since an objection merely purports to neutralize the effects of a reservation and thus, in the case of an objection "with maximum effect" (envisaged in article 20, paragraph 4 (b) of the Vienna Conventions), to prevent the treaty from entering into force as between the author of the objection and the author of the reservation, or, in the case of a simple objection, to prevent the application of the provisions of the treaty to which the reservation relates as between the States or international organizations in question – the implication being, in both cases, that general international law would then apply.

2.6.4 Freedom to oppose the entry into force of the treaty *vis-à-vis* the author of the reservation

A State or international organization that formulates an objection to a reservation may oppose the entry into force of the treaty as between itself and the author of the reservation.

(1) The freedom to make objections irrespective of the permissibility (or impermissibility) of the reservation, as set out in guideline 2.6.3, also encompasses the freedom to oppose the entry into force of the treaty as between the reserving State or international organization, on the one hand, and the author of the objection, on the other. This follows from article 20, paragraph 4 (b), and article 21, paragraph 3, of the Vienna Conventions, which specify the effects of an objection.

(2) Arriving at those provisions, in particular article 20, paragraph 4 (b), of the 1969 Convention, proved difficult. The Commission's early special rapporteurs, staunch supporters of the system of unanimity, had little interest in objections, the effects of which were, in their view, purely mechanical:[30] it seemed self-evident to them that an objection prevented the reserving State from becoming a party to the treaty.[31] Even though he came to support a more flexible system, Sir Humphrey Waldock still adhered to that view in 1962, as was demonstrated by the draft article 19, paragraph 4 (c), presented in his first report on the law of treaties, which stated that "the objections shall preclude the entry into force of the treaty as between the objecting and the reserving States".[32]

(3) The members of the Commission,[33] including the Special Rapporteur,[34] were, however, inclined to abandon that categorical approach in favour of a simple presumption

[30] See guideline 4.3.1 and the commentary thereto in sect. C.2 below.

[31] P. Reuter, *Introduction au droit des traités*, 2nd ed. (Paris, Presse Universitaire de France, 1985), p. 75, para. 132.

[32] *Yearbook … 1962*, vol. II., p. 62.

[33] See, in particular, Mr. Tunkin (*Yearbook … 1962*, vol. I, 653rd meeting, p. 156, para. 26, and 654th meeting, pp. 161–162, para. 11), Mr. Rosenne (*ibid*., 653rd meeting, pp. 156–157, para. 30), Mr. Jiménez de Aréchaga (*ibid*., p. 18, para. 48), Mr. de Luna (*ibid*., p. 160, para. 66) and Mr. Yasseen

in order to bring the wording of this provision more into line with the 1951 advisory opinion of the International Court of Justice, which stated:

> "As no State can be bound by a reservation to which it has not consented, it necessarily follows that each State objecting to it will or will not, on the basis of its individual appraisal within the limits of the criterion of the object and purpose stated above, consider the reserving State to be a party to the Convention."[35]

(4) Strictly aligning themselves with this position, the members of the Commission introduced a simple presumption in favour of the non-entry into force of the treaty as between the reserving State and the objecting State and at the same time, at that early stage, limited the possibility of opposing the treaty's entry into force to cases where the reservation was contrary to the object and purpose of the treaty.[36] Draft article 20, paragraph 2 (b), adopted on first reading, therefore provided the following:

> "An objection to a reservation by a State which considers it to be incompatible with the object and purpose of the treaty precludes the entry into force of the treaty as between the objecting and the reserving State, unless a contrary intention shall have been expressed by the objecting State."[37]

(5) Once the possibility of making an objection is no longer linked to the criterion of compatibility with the object and purpose of the treaty,[38] the freedom of the objecting State to oppose the treaty's entry into force in its relations with the reserving State becomes unconditional. The objecting State may, therefore, exclude all treaty relations between itself and the reserving State for any reason. The wording ultimately retained by the Commission went so far as to make this effect automatic: an objection (whatever the reason) precluded the entry into force of the treaty, unless the State concerned expressed its contrary intention.[39] During the Conference at Vienna, the thrust of that presumption was reversed, not without heated debate, in favour of the entry into force of the treaty as between the objecting State and the reserving State.[40]

(*ibid.*, 654th meeting, p. 161, para. 6).

[34] *Ibid.*, 654th meeting, pp. 162 and 163, paras. 17 and 29.

[35] Advisory opinion cited in footnote 6 above, p. 26.

[36] See the commentary to guideline 2.6.3, para. (4), above.

[37] *Yearbook … 1962*, vol. II, p. 176 and p. 181, para. (23) of the commentary.

[38] On this point, see the explanation given in paras. (5) to (7) of the commentary to guideline 2.6.3 above.

[39] Draft article 17, paragraph 4 (b), adopted on second reading, provided as follows: "An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State" (Report of the International Law Commission on the work of its eighteenth session, *Yearbook … 1966*, vol. II, p. 202).

[40] The question had already been raised during the discussion of the draft articles adopted on first reading by the members of the International Law Commission and by the Czechoslovak and Romanian delegations in the Sixth Committee (Sir Humphrey Waldock, fourth report (A/CN.4/177), footnote 9 above, pp. 48–49). The idea of reversing the presumption had been advocated by a number of Commission members (Mr. Tunkin (*Yearbook … 1965*, vol. I, 799th meeting, para. 39) and Mr. Lachs (*ibid.*, 813th meeting, para. 62)). Nonetheless, the proposals made in this regard by Czechoslovakia (A/CONF.39/C.1/L.85, in *United Nations Conference on the Law of Treaties, Documents of the Conference* (A/CONF.39/11/Add.2), footnote 14 above, p. 135), Syria (A/CONF.39/C.1/L.94, *ibid.*) and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.115, *ibid.*, p. 133) were rejected by the Conference in 1968 (*Summary records* (A/CONF.39/11), footnote 14 above, Twenty-fifth meeting, paras. 35 ff.). It was only in 1969 that a new Soviet amendment in this regard (A/CONF.39/L.3, in *United Nations Conference on the Law of Treaties, Documents of the*

(6) As open to criticism as this new approach may seem, the fact remains that the objecting State is still free to oppose the entry into force of the treaty in its relations with the reserving State. The reversal of the presumption simply requires the objecting State to make an express declaration to that effect, even though it remains completely free regarding its reasons for making such a declaration.

(7) In practice, States have been curiously eager to declare expressly that their objections do not prevent the treaty from entering into force *vis-à-vis* the reserving State, even though, by virtue of the presumption contained in article 20, paragraph 4 (b), of the Vienna Conventions, that would automatically be the case. Nor is this practice linked to the reason for the objection, since States make objections "with minimum effect" (specifically stating that the treaty will enter into force in their relations with the reserving State) even to reservations that they deem incompatible with the object and purpose of the treaty.[41] There are, however, some examples of objections in which States specifically declare that their objection does prevent the treaty from entering into force in their relations with the reserving State.[42] Such cases, though rare,[43] show that States can and do make such objections when they see fit.

Conference (A/CONF.39/11/Add.2), footnote 14 above, pp. 265–266) was finally adopted by 49 votes to 21, with 30 abstentions (*United Nations Conference on the Law of Treaties, Official records, Second Session, Vienna, 9 Apri–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), Tenth plenary meeting, para. 79).

[41] See Belgium's objections to the Egyptian and Cambodian reservations to the Vienna Convention on Diplomatic Relations (*Multilateral Treaties Deposited with the Secretary-General* (available from http://treaties.un.org/), chap. III.3) or the objections of Germany to several reservations to the same Convention (*ibid*.). It is, however, interesting to note that, even though Germany considered all the reservations in question as "incompatible with the letter and spirit of the Convention", the German Government declared for only some objections that they did not prevent the entry into force of the treaty as between Germany and the reserving States; it did not take a position on the other cases. Many examples can be found in the objections to the reservations formulated to the International Covenant on Civil and Political Rights, in particular the objections that were formulated to the reservation of the United States of America to article 6 of the Covenant by Belgium, Denmark, Finland, France, Italy, the Netherlands, Norway, Portugal, Spain and Sweden (*ibid*., chap. IV.4). All these States considered the reservation to be incompatible with the object and purpose of the Covenant, but nonetheless did not oppose its entry into force in their relations with the United States. Only Germany remained silent regarding the entry into force of the Covenant, despite its objection to the reservation (*ibid*.). The phenomenon is not, however, limited to human rights treaties: see, for example, the objections of Austria, France, Germany and Italy to Viet Nam's reservation to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (*ibid*., chap. VI.19) or the objections of the States members of the Council of Europe to the reservations to the International Convention for the Suppression of Terrorist Bombings of 1997 (*ibid*., chap. XVIII.9) or to the International Convention for the Suppression of the Financing of Terrorism of 1999 (*ibid.*).

[42] See, for example, the objections of China and the Netherlands to the reservations formulated by a number of socialist States to the Convention on the Prevention and Punishment of the Crime of Genocide (*Multilateral Treaties ...*, footnote 41 above, chap. IV.1), the objections of Israel, Italy and the United Kingdom to the reservations formulated by Burundi to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973 (*ibid.*, chap. XVIII.7), the objections of France and Italy to the United States reservation to the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (*ibid.*, chap. XI.B.22) or the objections of the United Kingdom to the Syrian and Vietnamese reservations and the objections of New Zealand to the Syrian reservation formulated to the Vienna Convention on the Law of Treaties (*ibid.*, chap. XXIII.1).

[43] This is not to imply that maximum-effect objections accompanied by the declaration provided for in article 20, paragraph 4 (b), are a type of objection that is disappearing, as is suggested by Rosa

(8) It follows that the freedom to make an objection for any reason whatsoever also implies that the objecting State or international organization is free to oppose the entry into force of the treaty in its relations with the reserving State or organization. The author of the objection thus has considerable latitude in specifying the effect of its objection on the entry into force of the treaty as between itself and the author of the reservation.[44] In any case, in order to oppose the entry into force of the treaty in its relations with the author of the reservation, the author of the objection need only accompany its objection with an expression of that intention, pursuant to guideline 2.6.8,[45] without having to state the reasons for its decision. The limitations on that freedom are explained in the part of the Guide to Practice that deals with the effects of reservations.[46]

(9) As was explained in relation to guideline 2.6.3,[47] the Commission considered it unnecessary in guideline 2.6.4 to state the self-evident proviso that the freedom of the author of the objection to oppose the entry into force of the treaty as between itself and the author of the reservation must be exercised in accordance with the conditions of form and procedure set out elsewhere in the Guide to Practice.

Riquelme Cortado (*Las Reservas a los Tratados: Lagunas y Ambigüedades del Régimen de Viena* (Universidad de Murcia, 2004), p. 283). It has been argued that the thrust of the presumption retained at the Vienna Conference (in favour of the entry into force of the treaty) and political considerations may explain the reluctance of States to resort to maximum-effect objections (see Catherine Redgwell, "Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties", *British Yearbook of International Law*, 1993, p. 267). See, however, the explanations provided by States to the question posed by the Commission on this point, (Eleventh report on reservations to treaties (A/CN.4/574), paras. 33 to 38, in particular paragraph 37).

[44] See also guideline 4.3.4 and the commentary thereto in sect. C.2 below.

[45] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10), pp. 197–200.

[46] See in particular guidelines 3.4.2 and 4.3.6 and the commentary thereto in sect. C.2 below.

[47] See the commentary to guideline 2.6.3, para. (12), above.