

The Vienna Conventions on the Law of Treaties

A Commentary

VOLUME I

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1986 Vienna Convention

Article 23

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

Bibliography

See the general bibliography on reservations under Articles 19 and 23 of the 1969 Vienna Convention

1. Article 23 did not raise any particular difficulties during the drafting of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

2. In his Fourth Report, Paul Reuter simply copied the text of Article 23 of the 1969 Vienna Convention, adding only the reference to international organizations.¹ Along the same lines, in his Fifth Report the Special Rapporteur proposed a rewording of paragraph 2 so as to 'take into account the notion of "formal confirmation" introduced in draft article 11, adopted by the International Law Commission at its twenty-seventh session'.²

3. Endorsed by the Commission,³ this approach led to the adoption of a final draft that repeated the 1969 text with which it differed 'only by [the] mention [in paras 1 and 2] of international organizations in addition to States'⁴ and the reference to 'formal confirmation' together with ratification, acceptance, and approval in paragraph 2. As for paragraphs 3 and 4, they replicate exactly the 1969 text. The draft was adopted without change by the 1986 Vienna Conference.

¹ *YILC*, 1975, vol. II, p 38.

² *YILC*, 1976, vol. II, Part One, p 146.

³ However, note the fleeting consideration by the Commission in 1977 of a distinct system for reservations depending upon whether they concerned treaties between several international organizations or between States and international organizations, particular Arts 23 and 23*bis* adopted at first reading, *YILC*, 1977, vol. II, Part Two, pp 115–16.

⁴ Commentary on Arts 21, 22, and 23, adopted on second reading, *YILC*, 1981, vol. II, Part Two, p 140 (see also *YILC*, 1982, Part Two, p 37).

4. The only issue that led to significant discussion concerned the reference to 'other States and international organizations entitled to become parties to the treaty' in Article 23(1).

5. Although the Special Rapporteur had not addressed this in his reports, when the draft was being discussed by the ILC in 1977, several members were concerned that there could be problems in determining the scope of 'international organizations entitled to become parties to the treaty'. Ushakov noted that:

In the case of treaties of a universal character concluded between States and international organizations, such communications would thus have to be made to all existing States. For the same category of treaties and also treaties concluded between international organizations only, it would, however, be more difficult to determine what international organizations were 'entitled to become parties'. If 10 international organizations were parties to a treaty, to what other international organizations would the communications have to be sent?⁵

6. Schwebel said 'an international organization was entitled to become a party to a treaty if there was a link between the basic function for which it had been created and the object and purpose of the treaty'.⁶ This view was not shared by Reuter. Noting that the expression 'entitled to become parties to the treaty is not defined in the 1969 Convention', he said this 'meant that entitlement to become party to a treaty concluded between States was necessarily determined by the treaty itself'. Treaties concerning all States should be open to all States, and it should be the same for international organizations.⁷

7. Ushakov, who continued to disagree with the text adopted by the Drafting Committee, made a formal proposal in the plenary session aimed at limiting communications concerning reservations for treaties between States and one or several international organizations⁸ to 'contracting organizations'. He failed to win support,⁹ but it was agreed that his proposal should be mentioned in a footnote in the commentary.¹⁰

8. This endorsement of the text of Article 23 of the 1969 Convention by the ILC and by the Conference itself¹¹ confirms its status as a codification of custom.¹²

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⁵ *YILC*, 1977, vol. I, 1434th meeting, 6 June 1977, p 101, para. 42.

⁶ *Ibid*, p 102, para. 48; similarly, Verosta, *ibid*, para. 45.

⁷ *Ibid*, para. 51; similarly, Calle y Calle, *ibid*, para. 46.

⁸ But not treaties concluded between several international organizations.

⁹ Probably out of a questionable concern not to depart from the language of the 1969 Convention, and to make no distinction between the rights of States and those of international organizations.

¹⁰ *YILC*, 1977, 1451st meeting, 1 July 1977, p 194, para. 11. For the footnote, see *YILC*, 1977, vol. II, Part Two, p 116, fn 485.

¹¹ See Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations and between International Organizations, Vienna, 18 February–21 March 1986, vol. I, Summary Records of the plenary sessions and of meetings of the plenary commission, vol. I, 5th plenary session (18 March 1986), paras 62 and 63.

¹² See the commentary on Art. 23 of the 1969 Convention, at paras 7 and 85.

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