

Reservation to a Treaty

It is well established in the practice of States that a State has a capacity, when becoming a party to a treaty, to accept most of the provisions of a treaty or to object, for whatever reasons, to particular provisions of a treaty. This capacity is reiterated by the Vienna Convention on the Law of Treaties which states that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless the reservation is either prohibited by the treaty or incompatible with its object and purpose, or the treaty permits only specified reservations. A reservation is defined by this Convention as “a unilateral statement, however phrased or named, by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effects of certain provisions of the treaty in their application to that State”.

The effect of a reservation depends on whether it is accepted or rejected by the other parties to a treaty, and this matter differs whether a treaty is bilateral or multilateral one. A reservation to a bilateral treaty presents no problem since it constitutes a counteroffer which may reopen the negotiation between the two parties concerning the terms of the treaty; and unless the reservation is accepted by the other party, no treaty will be concluded. However, a reservation to a multilateral treaty causes a problem because it may be accepted by some parties and rejected by others. In such a case, the Convention on the Law of Treaties provides that a reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides, and that when it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

The Convention requires that a reservation, an express acceptance of a reservation and an objection to a treaty be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty. However, an acceptance of a reservation by a State may be implied if it has raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to

be bound by the treaty, whichever is later. An objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States, unless a contrary intention is definitely expressed by the objecting State.

Unless the treaty provides otherwise, a reservation or an objection to a reservation may be withdrawn at any time. In case of the withdrawal of a reservation the consent of a State which has accepted the reservation is not required for its withdrawal. It is required that the withdrawal of a reservation or of an objection to a reservation be formulated in writing. Unless the treaty provides otherwise, or it is agreed otherwise, the withdrawal of a reservation or of an objection to a reservation becomes operative only when notice of it has been received by the concerned State.

A reservation established with regard to another party modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation, and modifies those provisions to the same extent for that other party in its relations with the reserving State. However, the reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*, i.e. in their relations with each other.

Entry into Force, Registration and Depositary of Treaties

The Convention provides rules applicable to the entry into force of treaties as well as rules applicable to registration and depositary of treaties.

1. Entry into Force of Treaties [\[16\]](#)

According to the Vienna Convention on the Law of Treaties, a treaty enters into force in such a manner and upon such date as it may provide or as the negotiating States may agree. In the absence of any such provisions or agreement, a treaty enters into force as soon as consent to be bound by that treaty has been established for all the negotiating States. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty provides otherwise.

Normally, treaties specify that they will enter into force upon a certain fixed date or after a determined period following the last ratification. Multilateral treaties, usually, provide for entry into force upon ratification by a specified number of States. However, even when the minimum required number of ratifications is reached, the treaty enters into force only between those States that have ratified it; it does not enter into force for other States until they have also ratified it. The Vienna Convention on the Law of Treaties, for example, provides that it will come into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.^[17] Moreover, it provides that for each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Nevertheless, a treaty or a part of it may be applied provisionally pending its entry into force if the treaty itself so provides, or the negotiating States have in some other manner so agreed. But, unless the treaty provides otherwise or the negotiating States have agreed otherwise, the provisional application of a treaty or a part of it with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

2. Registration and Depositary of Treaties

After the entry of a treaty into force, the Vienna Convention requires that the treaty to be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication. This requirement follows the one provided for by the Charter of the United Nations. Article 102 of

the Charter provides that every treaty and every international agreement entered into by any Member of the United Nations must, as soon as possible, be registered with the Secretariat and published by it. Under this article, non-registered treaty or agreement remains valid but the parties to it may not invoke it before any organ of the United Nations, including the International Court of Justice. This requirement is intended to prevent States from entering into secret treaties and in general to ensure publicity for treaties.

Treaties, nowadays, are registered with the Secretariat of the United Nations which then publishes them in the United Nations Treaty Series (UNTS). The UNTS provides a useful source of reference for the conclusion and contents of treaties.

In addition, the Vienna Convention on the Law of Treaties requires the designation of depositary of a treaty. This designation may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one State or more States, an international organization or the chief administrative officer of the organization. The depositary has functions of considerable importance relating to: keeping custody of the original text of the treaty, any instruments, notifications and communications related to the treaty; giving certified copies of the treaty and transmitting them to the concerned States; receiving any signatures, instruments, notifications and communications related to the treaty; and informing the States parties to the treaty about the entry into force of the treaty. Notably, the United Nations Secretariat plays a significant role as depositary of multilateral treaties.