

Document:-  
**A/CN.4/L.253**

**Draft articles on treaties concluded between States and international organizations or between international organizations: articles 19-23 proposed by Mr. Ushakov, in A/32/10, ft. 464, 478, 480, 482 and 485**

Topic:  
**Treaties concluded between States and international organizations or between two or more international organizations**

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between States,<sup>459</sup> it seems open to question how far the régime established by article 19 *bis*, paragraph 3, would have practical effect. There are, in fact, already in existence treaties relating to commodities which are open to participation by international organizations coming within a well-defined category. These include:

The Fifth International Tin Agreement<sup>460</sup> (article 54), which entered into force provisionally on 1 July 1976. It contains no provisions on reservations; certain "declarations" were made at the time of signature although it was not established whether they constitute reservations; one international organization has become a party to it.

The International Cocoa Agreement, 1975<sup>461</sup> (article 4), which entered into force provisionally on 1 October 1976 with the participation of one international organization; this prohibits any reservations (article 70).

The International Coffee Agreement, 1976<sup>462</sup> (article 6), which entered into force provisionally on 1 October 1976. This prohibits any reservations (article 63); one international organization is a party to it.<sup>463</sup>

<sup>459</sup> Caution must be exercised in analysing certain situations which are still evolving. The admission of the United Nations Council for Namibia, a subsidiary organ of the United Nations, to certain international conferences does not necessarily imply that the United Nations as such will become a party to the conventions which may result from those conferences. In this case, the United Nations would seem to be acting only on the basis of *representation* and would commit, rather than itself, the potential State it represents (see "Possibilities of participation by the United Nations in international agreements on behalf of a territory: study prepared by the Secretariat" (*Yearbook... 1974*, vol. II (Part Two), p. 8, document A/CN.4/281)). To the same effect, see the legal opinion prepared for the Under-Secretary-General, Office for Inter-Agency Affairs and Co-ordination, on the representation of national liberation movements in United Nations organs (United Nations, *Juridical Yearbook, 1974* (United Nations publication, Sales No. E.76.V.1), pp. 149-156, paras. 32-45). Similarly, the question of the opening of a future convention or future conventions on the law of the sea to participation by certain international organizations was still pending at the time this report was prepared (see *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VI (United Nations publication, Sales No. E.77.V.2), p. 127, document A/CONF.62/L.13, foot-note 12).

<sup>460</sup> *United Nations Tin Conference, 1975* (United Nations publication, Sales No. E.76.II.D.4), p. 5.

<sup>461</sup> *United Nations Cocoa Conference, 1975* (United Nations publication, Sales No. E.76.II.D.9), p. 5.

<sup>462</sup> International Coffee Organization, *International Coffee Agreement, 1976* (London, 1976).

<sup>463</sup> The wording used in these Agreements varies. The following is the text of article 4, para. 1, of the Cocoa Agreement:

"1. Any reference in this Agreement to a 'Government' shall be construed as including a reference to any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature or to deposit of instruments of ratification, acceptance or approval or to notification of provisional application or to accession by a Government shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, or to deposit of instruments of ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations."

(6) One member submitted to the Commission a system based on different ideas. This proceeds from the premise that the differences between States and international organizations are so general and so great that international organizations may not in any event formulate reservations other than those expressly authorized by the treaty or otherwise agreed. In addition, the treaties to which article 19 *bis* relates would be divided into two subcategories, each with a different régime. As regards the formulation of reservations to treaties between States and one or more international organizations, States would be subject to the same conditions as are laid down in the Vienna Convention, except if the participation of an international organization was essential to the object and purpose of the treaty; in the latter situation, even as between States but *a fortiori* as between States and international organizations, only reservations expressly authorized or otherwise agreed would be permitted. As regards the formulation of reservations to treaties between international organizations and one or more States, States would be subject, even as between themselves, to the same régime as international organizations; in other words, they would be able to formulate only those reservations expressly authorized by the treaty or otherwise agreed.<sup>464</sup>

#### *Article 19 ter. Objection to reservations*<sup>465</sup>

1. In the case of a treaty between several international organizations, an international organization may object to a reservation.

2. A State may object to a reservation envisaged in article 19 *bis*, paragraphs 1 and 3.

3. In the case of a treaty between States and one or more international organizations or between international organizations and one or more States, an international organization may object to a reservation formulated by a State or by another organization if:

(a) the possibility of objecting is expressly granted to it by the treaty or is a necessary consequence of the tasks assigned to the international organization by the treaty; or

(b) its participation in the treaty is not essential to the object and purpose of the treaty.

<sup>464</sup> Text proposed (A/CN.4/L.253):

#### *"Article 19. Formulation of reservations*

"1. An international organization, when signing, formally confirming, accepting, approving or acceding to a treaty between several international organizations, may formulate a reservation if the reservation is expressly authorized by the treaty or if it is otherwise agreed that the reservation is authorized.

"2. A State, when signing, ratifying, accepting, approving or acceding to a treaty between States and one or more international organizations, may formulate a reservation unless:

"(a) the reservation is prohibited by the treaty;

"(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(Continued on next page.)

*Commentary*

(1) The Vienna Convention is relatively cautious on the question of objections to reservations. It contains no definition of the notion of an objection<sup>466</sup> and mentions the matter only in the title and paragraphs 4 (b) and 5 of article 20, in the title and paragraph 3 of article 21, in the title and paragraphs 2 and 3 (b) of article 22 and in paragraphs 1, 3 and 4 of article 23. Furthermore, it does not settle all the questions concerning the mechanism of objections.

(2) With regard to the treaties which are the subject of the present draft articles, the Commission has not sought either to fill the gaps in the Vienna Convention or to interpret its provisions. However, having twice accepted (in article 19 and article 19 *bis*, paragraph 3) that international organizations are free to formulate reservations on the same terms as States, it had necessarily to deal with the question whether international organizations are also entitled to formulate objections to reservations.<sup>467</sup>

*(Foot-note 464 continued.)*

"(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

"3. An international organization, when signing, formally confirming, accepting, approving or acceding to a treaty between States and one or more international organizations, may formulate a reservation if the reservation is expressly authorized by the treaty or if it is otherwise agreed that the reservation is authorized.

"4. If the participation of an international organization in the treaty mentioned in paragraph 2 is essential for its object and purpose, a State may formulate a reservation if the reservation is expressly authorized by the treaty or if it is otherwise agreed that the reservation is authorized.

"5. An international organization, when signing, formally confirming, accepting, approving or acceding to a treaty between international organizations and one or more States, and

"a State, when signing, ratifying, accepting, approving or acceding to the said treaty,

"may formulate a reservation if the reservation is expressly authorized by the treaty or if the reservation is otherwise authorized."

<sup>465</sup> There are no corresponding provisions in the Vienna Convention.

<sup>466</sup> This omission not only creates uncertainty but also makes it impossible to invoke limits to objections similar to the limits which are applicable to the formulation of reservations as a result of the definition of reservations given in article 2, para. 1 (d), of the Vienna Convention and in the present draft articles.

<sup>467</sup> May an objection be made to a reservation which the reserving contracting State considers to be authorized, but which another State considers not to fall within the category of authorized reservations? The latter State may certainly "oppose" the reservation, but does this "opposition" have the same technical characteristics as an "objection"? It is clearly based on more restricted grounds, namely, breach of the treaty, than an "objection" proper, which may be made for any reason whatsoever, including the mere defence of an interest. Under the Vienna Convention, "opposition" to an allegedly authorized reservation would definitely not be subject to the time conditions set out in article 20, para. 5. It would seem, however, that such "opposition" could produce the same effects as an objection, since it is based on grounds which have greater legal weight than an objection. This question was brought up during the Commission's discussions. The text adopted by the Commission follows the guidance given by the Vienna Convention and, in one instance (article 19 *ter*, para. 2), is even more specific than the Convention; however, by the texts of its draft articles, the Commission certainly did not intend to preclude the possibility of "opposition" to a reservation, with ef-

(3) To make the draft more readily comprehensible, the essential provisions of article 19 *ter* are spread over three paragraphs: the first deals with treaties between several international organizations, while the second and third deal with treaties between States and one or more international organizations or between international organizations and one or more States. A State in the latter cases, like an international organization in the former, may make objections just as both may make reservations. There remains the situation of an organization in the case of treaties between international organizations and one or more States or between States and one or more organizations. Here, the possibility of formulating an objection exists in two instances:

1. If the participation of the organization in the treaty is not essential to the object and purpose of the treaty. This is the case in which the organization has the faculty to formulate reservations (article 19 *bis*) and hence in which the right to object and the right to formulate a reservation are symmetrical, understandably so since the international organization enjoys the same rights as a State.

2. If the possibility of objecting is expressly granted to an organization by the treaty or is a necessary consequence of the tasks which the treaty assigns to it. In this case, the organization has in principle no need, subject to what has been said in foot-note 467, to make objections properly so-called to reservations by other organizations, since those other organizations cannot formulate reservations which are not expressly authorized or otherwise agreed (article 19 *bis*, para. 2). However, since in a treaty of this kind the contracting States may formulate reservations which are not expressly authorized or otherwise agreed (article 19 *bis*, para. 1), the question arises whether an organization may object to such reservations. Generally speaking, the answer is in the negative, which once again marks a difference between States and international organizations. Nevertheless, the possibility of objecting exists, not only when it is expressly recognized by the treaty but also when it is a necessary consequence of the tasks assigned by the treaty to the organization. Consider the case of a treaty whose object is to ensure observance by the contracting States and any contracting organizations of rules relating, for example, to the protection of a certain environment; a particular organization is made responsible for verifying the observance of the rules by all the other contracting entities. The treaty contains no provision concerning reservations, and a contracting State formulates a reservation which, although not contrary to the object and purpose of the treaty,<sup>468</sup> is

facts as extensive as those of an objection proper. It also follows that, in order to prevent disputes as to the lawfulness of reservations and the problems they cause, it is not enough to reduce the permissible reservations to those which are expressly authorized by the treaty or otherwise agreed.

<sup>468</sup> If such a reservation is contrary to the object and purpose of the treaty, it is prohibited by article 19 *bis*, para. 1, and then, as in the case discussed in foot-note 467 above, the question which arises is not that of an objection proper but of "opposi-

calculated to restrict the organization's performance of its tasks in a particular respect; the organization does not have the right to formulate reservations (article 19 *bis*, para. 2), but it does have the right to raise an objection.

(4) Two further explanations must be given regarding the terminology used in article 19 *ter*. In paragraph 3 (a), the words "possibility of objecting" have been used in preference to the expressions "right to object" or "faculty to object", because the latter seem to refer to an organic and permanent capacity of the organization. The question of that capacity does, of course, arise, and it must be settled by reference to article 6,<sup>469</sup> which governs not only the articles on reservations but the whole draft: it is a prerequisite of any action which an organization may take under the draft articles that the organization shall have the capacity to take that action under its relevant rules. This capacity is the framework within which the treaty in question affords "possibilities" to the organization. Similarly, the term "tasks" has been used<sup>470</sup> to make it clear that the reference is not to the functions conferred on the international organizations by its constituent instrument (a treaty between States to which it is not a party), but to new and specific responsibilities which form part of the general functions conferred on it by its constituent instrument and have their legal origin in a treaty between States and one or more international organizations or between international organizations and one or more States.

**Article 20. Acceptance of reservations in the case of treaties between several international organizations<sup>471</sup>**

**1. A reservation expressly authorized by a treaty between several international organizations does not**

require any subsequent acceptance by the other contracting States unless the treaty so provides.

require any subsequent acceptance by the other contracting States unless the treaty so provides.

<sup>469</sup> See section B.I above.

<sup>470</sup> The same intention governs article 51, para. 1, of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. This paragraph provides that:

"The host State shall accord to the delegation all necessary facilities for the performance of its tasks". (*Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 217.)

The Commission decided to use the term "tasks" instead of "functions" throughout part III of the draft articles because of its more concrete and specific nature (*ibid.*, p. 37, document A/Conf.67/4, article 51, para. 2 of the commentary.

<sup>471</sup> Corresponding provisions of the Vienna Convention:

"Article 20. Acceptance of and objection to reservations

"1. A reservation expressly authorized by a treaty does not

require any subsequent acceptance by the other contracting organizations unless the treaty so provides.

2. When it appears from the object and purpose of a treaty between several international organizations 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.

3. In cases not falling under the preceding paragraphs and unless the treaty between several international organizations otherwise provides:

(a) acceptance by another contracting organization of a reservation constitutes the reserving organization a party to the treaty in relation to that other organization if or when the treaty is in force for those organizations;

(b) an objection by another contracting organization to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving organizations unless a contrary intention is definitely expressed by the objecting organization;

(c) an act expressing the consent of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting organization has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty between several international organizations otherwise provides, a reservation is considered to have been accepted by an international organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was

require any subsequent acceptance by the other contracting States unless the treaty so provides.

"2. 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.

"3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

"4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

"(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

"(b) 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;

"(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

"5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have 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."

notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

### Commentary

(1) For greater clarity of wording, the provisions of the draft corresponding to article 20 of the Vienna Convention have been divided into two articles, 20 and 20 *bis*, according to whether they refer to treaties between several international organizations or to treaties between States and one or more international organizations or between international organizations and one or more States.

(2) Certain differences from article 20 of the Vienna Convention should be noted. First, the title of the article no longer refers to "objection to reservations" since that is the title of article 19 *ter* but, like article 20 of the Vienna Convention, the draft twice mentions the question of objection to reservations and makes objections subject to similar rules.

(3) Second, draft article 20 contains no provisions parallel to article 20, paragraph 3, of the Vienna Convention. There might conceivably be an organization all of whose members were international organizations, but it would no longer come within the definition of an international organization given in paragraph 1 (*i*) of draft article 2.<sup>472</sup> The Commission considered that it could disregard such a special case, particularly since a rule similar to that in article 20, paragraph 3, of the Vienna Convention could not easily be made mandatory by means of a convention alone.

(4) Lastly, paragraph 2 has been simplified by the omission of any reference to the limited number of negotiating participants. The object of article 20, paragraph 2, of the Vienna Convention is to place treaties under a special régime in cases where "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". That text gives two criteria for the nature of such consent: the limited number of negotiating States and the object and purpose of the treaty. The second criterion is perfectly valid for treaties between several international organizations, but the first is not and has therefore been discarded. The limited degree of participation in a negotiation cannot indeed be measured in the same way for treaties between States as for treaties between international organizations, since the membership of international organizations already represents a multiplicity of States.

**Article 20 bis. Acceptance of reservations in the case of treaties between States and one or more international organizations or between international organizations and one or more States<sup>473</sup>**

1. A reservation expressly authorized by a treaty between States and one or more international organizations or between international organizations and one or more States, or otherwise authorized, does not, unless the treaty so provides, require subsequent acceptance by the contracting State or States or the contracting organization or organizations.

2. When it appears from the object and purpose of a treaty between States and one or more international organizations or between international organizations and one or more States 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 formulated by a State or by an international organization requires acceptance by all the parties.

3. In cases not falling under the preceding paragraphs and unless the treaty between States and one or more international organizations or between international organizations and one or more States otherwise provides:

(a) acceptance of a reservation by a contracting State or a contracting organization constitutes the reserving State or organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force between the State and the organization or between the two States or between the two organizations;

(b) an objection to a reservation by a contracting State or a contracting organization does not prevent the treaty from entering into force between the objecting State and the reserving State, between the objecting State and the reserving organization, between the objecting organization and the reserving State, or between the objecting organization and the reserving organization

unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act expressing the consent of a State or an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State or organization has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a contracting State or organization if it shall have 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.

<sup>472</sup> See section B.1 above.

<sup>473</sup> Corresponding provisions of the Vienna Convention: see foot-note 471 above.

## Commentary

(1) Article 20 *bis* differs from the preceding article mainly by reason of the drafting difficulties involved in stating the same principles but applying them to a much more complicated situation. In many cases, particularly in paragraph 3, it was not possible to propose wording which combines precision with elegance. The introduction of new definitions in article 2 of the draft might perhaps make it possible to simplify the text without sacrificing its clarity. This is an aspect of the matter which the Commission intends to consider later, on second reading.

(2) The same differences from the Vienna Convention are to be noted as in the previous draft article. However, although the Commission again proposes no provision parallel to article 20, paragraph 3, of the Vienna Convention, the participation of an international organization having the status of member of an organization composed mainly of States is no longer a purely theoretical possibility. As the Special Rapporteur pointed out in his previous reports,<sup>474</sup> there are already certain cases in which an international organization participates, with a special status, in another international organization; this also applies to the organizations set up under the commodity agreements referred to above.<sup>475</sup> However, although under the most recent agreements the international organization is assimilated to a *party to the treaty*, it is given special status as a *member of the organization*. Moreover, it is also open to question whether the definition of an international organization in article 2, paragraph 1 (*i*),<sup>476</sup> that is to say, an intergovernmental organization only, could cover the presence of a few international organizations as members among a body of States.<sup>477</sup>

(3) Lastly, it will be noted that the rule in paragraph 2, concerning treaties in respect of which a reservation must be accepted by all the parties, is designed to maintain all the provisions of the text as between all the parties, irrespective of their number, whereas the rule in paragraph 2 of article 19 *bis*, concerning the same kind of treaty but dealing with the possibility of *formulating* reservations, operates differently: it is not concerned with the question whether the same rules are applicable as between all the parties, but with whether the participation of a given organization is essential to the object and the purpose of the treaty, and if so, as has been seen, the organization may formulate only those reservations which are expressly authorized or otherwise agreed.<sup>478</sup>

<sup>474</sup> See, for example, *Yearbook... 1972*, vol. II, p. 194, document A/CN.4/258, para. 73, foot-note 178.

<sup>475</sup> Commentary to article 19 *bis*, para. 5.

<sup>476</sup> See section B.1 above.

<sup>477</sup> In its report on the work of its twenty-sixth session, the Commission seems to have decided that it could (*Yearbook... 1974*, vol. II, Part One, p. 295, document A/9610/Rev.1, chap. IV, sect. B, article 2, para. (7) of the commentary).

<sup>478</sup> The member of the Commission who proposed a draft article under which international organizations could never formu-

Article 21. *Legal effects of reservations and of objections to reservations*<sup>479</sup>1. A reservation established with regard to another party in accordance with articles 19, 19 *ter*, 20 and 23 in the case of treaties between several international organizations, or in accordance with articles 19 *bis*,

late reservations unless they were expressly authorized or otherwise agreed, or formulate objections, prepared a draft article 20 corresponding to articles 20 and 20 *bis* adopted by the Commission. This draft article 20 adapts article 20 of the Vienna Convention to his positions of principle and reads as follows (A/CN.4/L.253):

"Article 20. *Acceptance of reservations and objections to reservations*

"1. A reservation expressly authorized by a treaty between several international organizations or otherwise authorized does not require subsequent acceptance by the other contracting organizations unless the treaty so provides.

"2. A reservation expressly authorized by a treaty between States and one or more international organizations or otherwise authorized does not require subsequent acceptance by the other contracting States and the contracting organization or organizations, or by the contracting States and the other contracting organizations, as the case may be, unless the treaty so provides.

"3. A reservation expressly authorized by a treaty between international organizations and one or more States or otherwise authorized does not require subsequent acceptance by the other contracting organizations and the contracting State or States, or by the contracting organizations and the other contracting States, as the case may be, unless the treaty so provides.

"4. When it appears from the limited number of the negotiating States and the object and purpose of a treaty between States and one or more international organizations that the application of the treaty between all the States parties is one of the essential conditions of the consent of each one of them to be bound by the treaty, a reservation formulated by a State requires acceptance by all the States parties.

"5. In cases not falling under paragraphs 2 and 4 and unless the treaty between States and one or more international organizations otherwise provides:

"(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

"(b) 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;

"(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

"6. For the purposes of paragraphs 4 and 5 and unless the treaty between States and one or more international organizations otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of 12 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."

<sup>479</sup> Corresponding provisions of the Vienna Convention:

"Article 21. *Legal effects of reservations and of objections to reservations*

"1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

"(a) 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

"(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

"2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

(Continued on next page.)

19 *ter*, 20 *bis* and 23 *bis* in the case of treaties between States and one or more international organizations or between international organizations and one or more States:

(a) modifies for the reserving party in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving party.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a party objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving party, the provisions to which the reservation relates do not apply as between the two parties to the extent of the reservation.

### Commentary

Article 21 follows the text of article 21 of the Vienna Convention; the wording has been adapted to the various categories of treaties covered by the present draft articles, but no changes of substance have been made.<sup>480</sup>

(Foot-note 479 continued.)

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."

<sup>480</sup> The same applies to the proposal made by one member and based on different premises from those of the Commission itself (A/CN.4/L.253):

#### "Article 21. Legal effects of reservations and of objections to reservations"

"1. A reservation established with regard to another party in accordance with article 19, paragraph 1, article 20, paragraph 1, and article 23, paragraphs 1, 5, 6 and 7:

"(a) modifies for the reserving international organization in its relations with that other party the provisions of the treaty between several international organizations to which the reservation relates to the extent of the reservation; and

"(b) modifies those provisions to the same extent for that other party in its relations with the reserving organization.

"2. A reservation established with regard to a party in accordance with article 19, paragraphs 2, 3 and 4, article 20, paragraphs 2, 4, 5 and 6, and article 23, paragraphs 2, 4, 5, 6 and 7:

"(a) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty between States and one or more international organizations to which the reservation relates to the extent of the reservation; and

"(b) modifies those provisions to the same extent for that other party in its relations with the reserving State or international organization.

"3. A reservation established with regard to another party in accordance with article 19, paragraph 5, article 20, paragraph 3, and article 23, paragraphs 2, 4, 5, 6 and 7:

"(a) modifies for the reserving international organization or State in its relations with that other party the provisions of the

### Article 22. Withdrawal of reservations and of objections to reservations<sup>481</sup>

1. Unless a treaty between several international organizations, between States and one or more international organizations or between international organizations and one or more States otherwise provides, a reservation may be withdrawn at any time and the consent of the State or international organization which has accepted the reservation is not required for its withdrawal.

2. Unless a treaty mentioned in paragraph 1 otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless a treaty between several international organizations otherwise provides, or it is otherwise agreed:

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

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

4. Unless a treaty between States and one or more international organizations or between international organizations and one or more States otherwise provides, or it is otherwise agreed:

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

treaty between international organizations and one or more States to which the reservation relates to the extent of the reservation; and

"(b) modifies those provisions to the same extent for that other party in its relations with the reserving international organization or State.

"4. The reservation does not modify the provisions of the treaties mentioned in the preceding paragraphs for the other parties to those treaties *inter se*.

"5. When a State objecting to a reservation has not opposed the entry into force, between itself and the reserving State, of the treaty between States and one or more international organizations, the provisions to which the reservation relates do not apply between the two States to the extent of the reservation."

<sup>481</sup> Corresponding provisions of the Vienna Convention:

#### "Article 22. Withdrawal of reservations and of objections to reservations"

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

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

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

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

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

(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.

*Commentary*

Article 22 follows the text of article 22 of the Vienna Convention; the wording has been adapted to the various categories of treaties covered by the present draft articles, but no changes of substance have been made.<sup>482</sup>

**Article 23. Procedure regarding reservations in treaties between several international organizations<sup>483</sup>**

1. In the case of a treaty between several international organizations, a reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting organizations and other international organizations entitled to become parties to the treaty.

2. If formulated when signing subject to formal confirmation, acceptance or approval a treaty between several international organizations, a reservation must be formally confirmed by the reserving 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.

<sup>482</sup> The same applies to the proposal made by one member and based on different premises from those of the Commission itself (A/CN.4/L.253):

*"Article 22. Withdrawal of reservations and of objections to reservations"*

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

"2. Unless the treaty between States and one or more international organizations otherwise provides, a reservation may be withdrawn at any time and the consent of the State or of the international organization which has accepted the reservation is not required for its withdrawal.

"3. Unless the treaty between international organizations and one or more States otherwise provides, a reservation may be withdrawn at any time and the consent of the organization or of the State which has accepted the reservation is not required for its withdrawal.

"4. Unless the treaty between States and one or more international organizations otherwise provides, an objection to a reservation may be withdrawn at any time.

"5. Unless the treaties mentioned in paragraphs 1, 2 and 3 otherwise provide, or it is otherwise agreed, the withdrawal of a reservation becomes operative in relation to another contracting State or another contracting organization only when notice of it has been received by that State or international organization.

"6. Unless the treaty between States and one or more international organizations 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 which formulated the reservation."

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.

*Commentary*

The provisions of article 23 of the Vienna Convention have been transposed to the present draft. Their wording has been adapted to the various categories of treaties to which the draft articles relate, without any changes of substance being made. However, in order to simplify the text, the relevant paragraphs have been divided into two separate articles, 23 and 23 bis, according to whether they relate to treaties between several international organizations, or to treaties between States and one or more international organizations or between international organizations and one or more States.

**Article 23 bis. Procedure regarding reservations in treaties between States and one or more international organizations or between international organizations and one or more States<sup>484</sup>**

1. In the case of a treaty between States and one or more international organizations or between international organizations and one or more States, 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 organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated by a State when signing subject to ratification, acceptance or approval a treaty mentioned in paragraph 1 or if formulated by an international organization when signing subject to formal confirmation, acceptance or approval a treaty mentioned in paragraph 1, 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.

<sup>483</sup> Corresponding provisions of the 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 other States entitled to become parties to the treaty.

"2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State 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."

<sup>484</sup> Corresponding provisions of the Vienna Convention: see foot-note 483 above.



3. An express acceptance of, or an objection to, a reservation made previously to a 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.

#### Commentary

The provisions of article 23 of the Vienna Convention have been transposed to the present draft. Their wording has been adapted to the various categories of treaties to which the draft articles relate, without any changes of substance being made. However, in order to simplify the text, the relevant paragraphs have been divided into two separate articles, 23 and 23 *bis*, according to whether they relate to treaties between several international organizations, or to treaties between States and one or more international organizations or between international organizations and one or more States.<sup>485</sup>

<sup>485</sup> The proposal made by one member and based on different premises from those of the Commission itself consists of only one article, corresponding to draft articles 23 and 23 *bis* (A/CN.4/L.253):

#### "Article 23. Procedure regarding reservations

"1. In the case of a treaty between several international organizations, a reservation and an express acceptance of a reservation must be formulated in writing and communicated to the contracting organizations and other international organizations entitled to become parties to the treaty.

"2. In the case of a treaty between States and one or more international organizations, 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, to the other States entitled to become parties to the treaty and to the contracting organizations.

"3. In the case of a treaty between international organizations and one or more States, a reservation and an express acceptance of a reservation must be formulated in writing and communicated to the contracting organizations, to the other international organizations entitled to become parties to the treaty and to the contracting States.

"4. If formulated when signing a treaty, as mentioned in paragraphs 2 and 3, subject to ratification, acceptance or approval of the treaty, a reservation must be formally confirmed by the reserving State 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.

"5. If formulated when signing a treaty, as mentioned in paragraphs 1, 2 and 3, subject to formal confirmation, acceptance or approval of the treaty, a reservation must be formally confirmed by the reserving 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.

"6. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

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

<sup>486</sup> Corresponding provisions of the Vienna Convention:

#### "Article 24. Entry into force

"1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

"2. Failing any such provision or agreement, a treaty enters

#### SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

#### Article 24. Entry into force of treaties between international organizations<sup>486</sup>

1. A treaty between international organizations enters into force in such manner and upon such date as it may provide or as the negotiating organizations may agree.

2. Failing any such provision or agreement, a treaty between international organizations enters into force as soon as consent to be bound by the treaty has been established for all the negotiating organizations.

3. When the consent of an international organization to be bound by a treaty between international organizations is established on a date after the treaty has come into force, the treaty enters into force for that organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty between international organizations regulating the authentication of its text, the establishment of the consent of international organizations to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

#### Commentary

For reasons of clarity, the provisions which correspond to article 24 of the Vienna Convention are set out in two separate and symmetrical articles, 24 and 24 *bis*, the texts of which differ from the Vienna Convention only by the drafting changes needed to adapt them to cover the two categories of treaties with which the present articles are concerned. The section concerning reservations being concluded, it is now possible, for the designation of those two categories of treaties, to revert to the more general terminology used in article 2, paragraph 1 (a),<sup>487</sup> which distinguishes treaties between one or more States and one or more international organizations from treaties between international organizations.

into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

"3. 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 otherwise provides.

"4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text."

<sup>487</sup> See section B.1 above.