

Reference: C.N.498.2023.TREATIES-XVIII.12.b (Depositary Notification)

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA
AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION
AGAINST TRANSNATIONAL ORGANIZED CRIME

NEW YORK, 15 NOVEMBER 2000

LITHUANIA: COMMUNICATION *

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 28 November 2023.

(Original: English)

“No. SN78-82

The Permanent Mission of the Republic of Lithuania to the United Nations (“Lithuania”) presents its compliments to the Secretary-General of the United Nations and has the honour to refer to Communication No. 02-24/1318 by the Republic of Belarus (“Belarus”) (C.N.473.2023.TREATIES-XVIII.12.b (Depositary Notification)) dated 13 November 2023, concerning Lithuania’s Communication (C.N.374.2023.TREATIES-XVIII.12.b (Depositary Notification)) objecting to Belarus’ Interpretative Declaration on Article 20 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime adopted on 15 November 2000 (“Protocol”) (C.N.225.2023.TREATIES-XVIII.12.b (Depositary Notification)).

Lithuania reiterates its strong objection to Belarus’ attempt to involve the Secretary-General, in his function as depositary of multilateral treaties, in a bilateral disagreement over the legal effects of Lithuania’s withdrawal of its reservation *vis-a-vis* the jurisdiction of the International Court of Justice (“Court”). Lithuania has no intention to protract this exchange with Belarus in this forum, but it nonetheless feels compelled to raise the following in response to Belarus’ latest communication.

Article 20(3) of the Protocol affirms that States may submit a reservation to Article 20(2) “at the time of signature, ratification, acceptance or approval of or accession” to the Protocol. For its part, Article 20(4) of the Protocol provides that “[a]ny State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.” Lithuania submitted its reservation when it ratified the

* See depositary notifications C.N.473.2023.TREATIES-XVIII.12.b of 16 November 2023 (Belarus: Communication), C.N.374.2023.TREATIES-XVIII.12.b of 22 September 2023 (Lithuania: Communication) and C.N.225.2023.TREATIES-XVIII.12.b of 31 July 2023 (Belarus: Interpretative Declaration).

Protocol on 12 May 2003.¹ On 12 May 2023, Lithuania exercised its right to withdraw that reservation. Consequently, Article 20(2) became binding between Lithuania and all other State Parties that had ratified the Protocol with no reservation to it, including Belarus, with immediate and full effect.² Because pursuant to the terms of Article 20(4), no consent by the State Parties was required for Lithuania's withdrawal to be valid and to produce its effect, Belarus' objection to Lithuania's withdrawal can also not change the applicability of Article 20(2) as between the two State Parties.

The so-called Interpretative Declaration of Belarus of 31 July 2023 (C.N.225.2023.TREATIESXVIII. 12.b (Depositary Notification)) purports to modify the legal effect of Article 20(2) of the Protocol by excluding from the jurisdiction of the Court "situations when disputes concerning the interpretation or application of the Protocol have arisen from and/or become the subject of peaceful settlement, *inter alia* through negotiations and/or arbitration, before, on, or immediately after the withdrawal of such a reservation." As such, the so-called Interpretative Declaration is in fact a reservation which would be permissible pursuant to Article 20(3) only when made "at the time of signature, ratification, acceptance or approval of or accession to this Protocol." Had it wished to limit the compulsory jurisdiction of the Court in this manner, Belarus should have submitted a reservation, at the latest, when it ratified the Protocol on 25 June 2003.³ Belarus did not do so then, and it cannot do so now under the guise of its "Interpretative Declaration".

Belarus' Communication of 13 November 2023 states that the wording of Article 20(3) has been "widely used in similar provisions of many other United Nations multilateral treaties." An example of such a treaty is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The commentary of that convention confirms that the withdrawal of a reservation to the dispute settlement clause brings the latter "into operation between the State [] withdrawing the declaration and all other States [] that have not made such declarations."⁴ Article 20(2) is thus immediately applicable in the relations between Belarus – as a State that ratified the Protocol with no reservation to it – and Lithuania – as a State that withdrew its reservation to the dispute settlement clause.

Finally, in its Communication of 13 November 2023, Belarus seeks to deflect attention from its impermissible reservation by casting Lithuania's withdrawal of its reservation as an "attempt ... to extend the jurisdiction of the [Court] to the application of the Protocol in the relations with other States Parties which took place prior to that kind of withdrawal (*jurisdiction ratione temporis*)."⁵ However, there can be no question that the Protocol did apply in the relations between Lithuania and the other States Parties to it, irrespective of Lithuania's reservation to Article 20(2). The immediate applicability of that provision after the withdrawal of Lithuania's reservation should not be conflated with a retroactive application of Article 20(2) or the other provisions of the Protocol. It cannot also be denied

¹ United Nations Treaty Collection, Status of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime < https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-b&chapter=18&clang=en#8 >

² International Law Commission, "Guide to Practice on Reservations to Treaties" (2011) < https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_8_2011.pdf >, ¶2.5.7(1) ("The withdrawal of a reservation entails the full application of the provisions to which the reservation relates in the relations between the State or international organization which withdraws the reservation and all the other parties, whether they had accepted the reservation or objected to it.")

³ United Nations Treaty Collection, Status of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime < https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-b&chapter=18&clang=en#8 >.

⁴ Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (20 December 1988), < https://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_united_nations_convention_1988_E.pdf >, p. 418, ¶32.5 .

that whether “disputes concerning the interpretation or application of the Protocol [that] have arisen from and/or become the subject of peaceful settlement, *inter alia* through negotiations and/or arbitration, before, on, or immediately after the withdrawal of such a reservation” fall within the jurisdiction of the Court is a matter to be determined by the Court itself pursuant to its *compétence de la compétence*. Insofar as Belarus’ “Interpretive Declaration” seeks to usurp that authority, this is yet another reason why it is in essence an impermissible reservation.

In light of the foregoing, Lithuania requests the Secretary General of the UN as the Depositary to disseminate this statement and clarifications of Lithuania among all Parties to the Protocol.

The Permanent Mission of the Republic of Lithuania to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurance of its highest consideration.

New York, 28 November 2023”

1 December 2023

A handwritten signature in black ink, consisting of stylized letters 'DN' with a horizontal line underneath.