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THE AFRICAN STATES' PRACTICE OF WITHDRAWAL IN THE LIGHT OF THE INTERNATIONAL LAW OF TREATIES

Luigi Zuccari*

The article examines the recent practice of African States withdrawing from international treaties, intending to highlight its most notable aspects, particularly those that diverge from relevant international law and practice.

The analysis demonstrates, first and foremost, that several distinctive practices in Africa concerning withdrawal are frequently directed at preserving the continuity and stability of the international obligations undertaken by the States of the continent. This approach is evident in continental trends that explicitly recognize the right to revoke a withdrawal or that vest the power to withdraw in parliamentary bodies.

Other African practices have also been identified, such as those promoting the termination of treaties concluded with former colonial powers. In this regard, the African practice of 'collective withdrawal' becomes relevant. Notably, the study has shown that 'collective withdrawal' can be considered as a reaction to the enduring forms of legal imperialism, through which African States are also challenging the limits provided for by the international law of treaties.

Keywords: withdrawal; denunciation; African practice; law of the treaties

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* Luigi Zuccari is a Research Fellow at Sapienza University of Rome and an Adjunct Professor of International Law at the Niccolò Cusano University, ORCID ID: 0000-0003-1636-6413.
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I. INTRODUCTION

This article on the recent African States' practice regarding withdrawal from international treaties arises from the need to explore further an area of international law and practice that remains largely unexplored by authors.

It is noted that scholarly analyses of treaty withdrawal, even the most recent ones[1], often do not devote sufficient attention to the legal trends emerging in the African continent, where withdrawal is exercised not infrequently, in contrast with the prevailing international practice. Moreover, over the past decade, there has been a growing trend among African States to resort to treaty withdrawal, a development that has accelerated markedly in the past four years. Specifically, several West African States have, in a coordinated manner, denounced multiple treaties establishing international organizations, as well as bilateral agreements pertaining to military, fiscal, and economic matters.

The paper aims to systematically examine this continental practice, highlighting its most significant aspects, particularly those that diverge from relevant international law and practice.

To achieve this specific goal, the analysis begins with a concise overview of the international law governing withdrawal (Section II). In this context, international law primarily, though not exclusively, serves as the benchmark against which the conformity of African States' practices is assessed. Subsequently, the investigation focuses on the legal regime and practical application of treaty withdrawal in Africa.

The legal regime is studied in Section III. Here, both the 'withdrawal clauses' contained in the 'African agreements' and the constitutional provisions of the African States are analyzed to identify the *idem sentire* of the continent

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1 See, Averell Schmidt, 'Treaty Withdrawal and the Development of International Law' (2024) Review of International Organizations 785; Inken von Borzyskowski and Felicity Vabulas, 'When Do Withdrawal Threats Achieve Reform in International Organizations?' (2023) 4(1) Global Perspectives; Antonio Morelli, *Withdrawal from Multilateral Treaties* (Brill 2021); Connie de la Vega & Andrew Campbell Lee, 'Provisions for Withdrawing from International Human Rights Treaties' (2022) 28 Journal of International and Comparative Law 315.

regarding withdrawal.[2] This section examines the international treaties adopted by the five leading African international organizations, as well as the constitutions of all 54 African countries.[3]

Section IV focuses on the practical application of treaty withdrawal. The main cases of denunciation of international treaties by African States are examined, to highlight how the procedures applied by these countries are not always consistent with international law and practice. The research primarily focuses on cases of withdrawal involving African countries over the past decade, paying particular attention to those concerning agreements with the former colonial powers.[4]

Finally, the findings are systematically organized in the conclusions, in order to assess whether distinctive African patterns of withdrawal have given rise to new practices that may challenge the international law of treaties as codified in the 1969 Vienna Convention on the Law of the Treaties (VCLT).[5]

2 In this article, the term 'African agreements' will refer to treaties concluded exclusively between African States.

3 In particular, the research has covered all 179 treaties adopted within the framework of the African Union, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Economic Community of Central African States (ECCAS) and the East African Community (EAC). Only treaties amending other treaties have been excluded from the analysis.

4 As will be more fully illustrated in the subsequent sections, these specific instances of withdrawal can be interpreted as a reaction to persistent forms of legal imperialism. In this paper, 'legal imperialism' refers to the use of law by a State as an instrument to extend its authority, power and sovereignty into another State. This is typical of some colonial and post-colonial treaties.

5 Vienna Convention on the Law of the Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

II. THE PRACTICE OF TREATY WITHDRAWAL IN INTERNATIONAL LAW

1. Definition of Treaty Withdrawal and Terminological Issues

In international law, withdrawal is a unilateral act of a State party to a treaty that results in the termination of that treaty for the withdrawing Party.[6] Like 'withdrawal', 'denunciation' refers to the termination of a State's participation in a treaty.[7] However, some authors prefer to distinguish between the two concepts, considering them as distinct legal mechanisms.[8] They suggest that the term 'withdrawal' should be used for multilateral agreements, where the State's will to terminate its treaty obligations does not necessarily determine the termination of the agreement for the other

6 Anthony Aust, 'Treaties, Termination' (2006) *Max Planck Encyclopedias of Public International Law* <https://opil.ouplaw.com/home/mpil> accessed 14 January 2026; Ugo Villani, 'Recesso (Diritto internazionale)' (1988*) Enciclopedia del Diritto* 45; Herbert W Briggs, 'Unilateral Denunciation of Treaties: The Vienna Convention and the International Court of Justice' (1974) 68 American Journal of International Law 51.

7 See, VCLT, articles 42, 43 and 56.

8 The VCLT, as well as its commentaries, also distinguish between denunciation and withdrawal without providing a definition of these concepts. See, International Law Commission (ILC), Draft Articles on the Law of Treaties with commentaries, Report 1966. This distinction, however, is not confirmed by international practice, where the terms 'withdrawal' and 'denunciation' are often used interchangeably. See, the long list of international treaties that explicitly refer to the term 'denunciation' while being multilateral in nature. See, for example, the United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) UNTS 2349; the Optional Protocol to the Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UNTS 999; Charter of the Organization of American States (adopted 30 April 1948, entered into force 13 December 1951) UNTS 119; UN Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) UNTS 2225.

contracting parties.[9] The term 'denunciation', instead, would seem more appropriate for bilateral treaties, where the will of the withdrawing State always results in the complete termination of the agreement.[10]

Since this paper focuses on the terminating effects of these unilateral acts, the terms 'withdrawal' and 'denunciation' will be used interchangeably.

2. The Evolution of Withdrawal in International Relations: A Legal-Historical Analysis

Like other aspects of international law, the practice of withdrawal has been shaped by the transformations that have affected the international community since the end of World War II. Over this period, withdrawal has evolved from a marginal legal mechanism to a significant instrument of both domestic and international state policy.

At the end of World War II, the need arose to ensure a lasting, homogeneous, and universal application of international law, promoting the establishment of a 'new world order' based on the maintenance of international peace and security. At this time, 'international treaties were meant to be perpetual tools, without withdrawal clauses, with which to secure world order around core values'.[11] Withdrawal, therefore, was essentially perceived as a legal instrument that could undermine the

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9 However, where a multilateral treaty provides for a minimum number of States parties to be in force, a withdrawal which determines the loss of that minimum number shall result in the termination of the agreement for all contracting parties. See, Convention on the Political Rights of Women (adopted 31 March 1953, entered into force 7 July 1954) 193 UNTS 135, art 8(2).

10 In order to clarify the differences between 'withdrawal' and 'denunciation', see Francesco Capotorti, 'L'extinction et la suspension des traités' (1971) 134 Recueil des Cours de l'Académie de droit international de La Haye 417. Recently, see Laurence R Helfer, 'Terminating Treaties' in Duncan B Hollis (ed), *The Oxford Guide to Treaties* (2nd edn, Oxford University Press 2020).

11 Morelli (n 1) 82.

achievement of the objectives provided for by emerging international law, of which the UN Charter was the main expression.

During this period, and until the early 1970s, withdrawal was primarily exercised when it served the interests of the 'new international order'. Specifically, it was employed to terminate obsolete treaties that had become irrelevant due to historical or political developments.[12] Cases of withdrawal as an 'oppositional reaction' to treaty obligations have been almost nonexistent.[13] In these rare instances, withdrawal was not even formally recognized as such. This is exemplified by Indonesia's withdrawal from the United Nations in 1965 and the departures of several socialist countries from UNESCO and the WHO in the 1950s, which the organizations did not regard as withdrawals but rather as 'inactive members'.[14]

Limiting the right of withdrawal appeared justified by the social need to promote a legal system based on the values of security and peaceful

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12 See, for instance, withdrawals from the Agreement on Most-Favoured-Nation Treatment for Areas of Western Germany under Military Occupation, which became obsolete with the end of the occupation of Western German territory. For more examples of this trend, see *Depositary Notifications (CNs) by the Secretary-General* at <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en> accessed 14 January 2026. See also, Frederick Cowell, *The Law, Politics and Theory of Treaty Withdrawal* (Bloomsbury 2023) 4.

13 For instance, out of the 25 declarations of withdrawal submitted to the UN Secretary-General between 1950 and 1970, 19 referred to obsolete treaties (relating, for example, to West Germany or to the jurisdiction of the Permanent Court of International Justice). Very similar results are obtained if the study takes into account the declarations under the name 'denunciation' received by the Secretary-General throughout the same period. Further details, at *Depositary Notifications (CNs) by the Secretary-General* (n 9).

14 On the Indonesia's withdrawal and the notion of "inactive members", see footnote (38) and also Nathan Feinberg, 'Unilateral Withdrawal from an International Organization' (1963) 39 *British Yearbook of International Law* 189.

cooperation among States.[15] However, this approach contrasts with the voluntary nature of international treaties, of which withdrawal is a significant aspect.

Around the mid-1970s — and thanks to the process of decolonization and the adoption of the VCLT, — withdrawal began to be used more frequently. For instance, the were numerous instances of African countries withdrawing from colonial-era treaties are significant, as are the withdrawals of the United States (1983), Israel, and the United Kingdom (1984) from UNESCO, along with the departures of the United States (1975), Vietnam (1983), and Poland (1984) from the ILO. Withdrawal emerged as a valuable instrument to assert national interests, if necessary, even in opposition to international governance.

From the 1970s onwards, therefore, treaty withdrawal practice underwent a shift: it was no longer primarily a tool for consolidating the political and legal order established after World War II but instead reacquired its traditional function of 'disengagement'. From that moment, States began to withdraw for a wide range of reasons.[16] Today, States denounce international treaties when they are perceived as obstacles to the pursuit of national interests or as a means to challenge specific policies adopted by the international organization established by each respective agreement.[17]

[15] In this perspective, it is also relevant to mention the legal position according to which denunciation could only be exercised in the presence of specific withdrawal clauses. See Villani (6) 49, according to which 'in assenza di una siffatta disposizione, è da ritenere che la possibilità di recedere sia esclusa'.

[16] For instance, see Stefan Gänzle, Jens U Wunderlich and Tobias C Hofelich, 'Differentiated Disintegration in the Economic Community of West African States, the Eurasian Economic Community and the European Union: A Comparative Regionalism Approach' (2024) 46 Journal of European Integration 881. See, also, footnotes (17), (18), (19) and (20).

[17] See the withdrawal procedures initiated by the President of the United States, Donald Trump, between 2016 and 2020, which led the American administration

Furthermore, States withdraw from treaties to criticize the work of some international tribunals,[18] to claim specific spaces of sovereignty[19], or for purely economic reasons.[20]

to withdraw from the Paris Climate Agreement and the Optional Protocol to the Vienna Convention on Diplomatic Relations.

18 See for example, the arguments used by Venezuela to denounce the American Convention on Human Rights in 2012, available at <www.oas.org/DIL/Nota_Rep%C3%BAblica_Bolivariana_Venezuela_to_SG.English.pdf> last accessed 28 March 2025. See also Benin's withdrawal of the declaration accepting the jurisdiction of the African Court on Human and Peoples' Rights. *République du Bénin, Ministères des Affaires étrangères et de la Coopération du Bénin*, n. 216/MAEC/AM/SP-C, Cotonou, 24 March 2020, available at: <https://www.african-court.org/wpafc/declarations/>, accessed 21 January 2026. For a deeper analysis, see Girma Gadisa, 'State Parties' Withdrawal of Direct Access to African Court on Human and Peoples' Rights: The Need to Reinvigorate Complementarity' (2023) 12 Oromia Law Journal 141.

19 See the well-known case of Brexit (*Letter from the Prime Minister to Donald Tusk Triggering Article 50*, Prime Minister's Office, 29 March 2017 <www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50> accessed 16 January 2026) and the Nicaragua's denunciation of the Charter of the Organization of American States (*Letter to the Secretary General of the Organization of American States Denouncing Nicaragua's Acceptance of the OAS Charter*, Nicaraguan Minister of Foreign Affairs, 19 November 2021 <www.oas.org/en/sla/dil/docs/A-41_letter_denounce_Nicaragua_11-19-2021.pdf> accessed 16 January 2026).

20 See the *Executive Order 'Withdrawing the United States from the World Health Organization'*, President of the United States, 20 January 2025 <www.whitehouse.gov/presidential-actions/2025/01/withdrawing-the-united-states-from-the-worldhealth-organization/> accessed 16 January 2026. See also the recent Trump's Presidential Memoranda, *Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States*, 7 January 2026.

Moreover, withdrawal can have significance even when merely threatened.[21] In contemporary practice, States frequently use the threat of denunciation as a strategic lever to strengthen their position within the cooperative framework established by a treaty or to prompt its modification.[22] A pertinent example is found in the 'threatened withdrawal' of South Africa and Gambia from the Statute of the International Criminal Court (ICC), to make the Court's work more 'impartial'.[23]

Since the 1970s, through this frequent recourse to withdrawal, States have asserted their sovereignty. They have also reaffirmed the voluntary nature of international treaties as implying the transience of the agreement. By its very nature, the treaty is not concluded as a perpetual instrument. Instead, it is a consensual act and, for this reason, it is subject to the changing will of the Parties, which can be expressed through withdrawal.[24]

3. The Legal Regime Governing Withdrawal from International Treaties

A. Withdrawal from Treaties Containing Ad Hoc Clauses

From a legal perspective, withdrawal is governed by the exit clauses enshrined in a treaty, which may establish a simple and generic 'right of

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[21] In this contribution, the term 'threatened withdrawal' refers to a strategic invocation of denunciation in which the formal legal process is never completed.

[22] Wabwile claims that 'exit, proposed withdrawal, or expressions of dissent by a significant number of important states parties may be the catalyst required to trigger reform of contentious aspects of a treaty system'. Michael Nyongesa Wabwile, 'South Africa's Proposed Exit from Rome Statute: Alternative Perspectives' (2018) 11 *African Journal of Legal Studies* 117, 140.

[23] See *Depositary Notification by Gambia: Withdrawal*, C.N.862.2016.TREATIES-XVIII.10 10 November 2016 and *Depositary Notification by South Africa: Withdrawal*', C.N.121.2017.TREATIES-XVIII.10 7 March 2017.

[24] See, Morelli (n 1) 10. Here, the author defines 'withdrawal as an expression of the States' voluntarism'.

withdrawal' or set specific procedural limits on the States' ability to terminate the treaty unilaterally.[25]

For instance, certain international human rights agreements negotiated under the auspices of the United Nations (UN) provide for a generic and straightforward right of withdrawal. Some of these treaties establish that

> [a] State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.[26]

This specific type of withdrawal provision, also enshrined in the founding treaties of certain international organizations, requires only a written notification and defers its effectiveness for one year.

In other cases, withdrawal clauses provide for strict limits. In this regard, reference is made to the conventional rules that prevent withdrawal for a specific number of years, calculated from the date the agreement entered into force. This is the case of the Treaty establishing the Atlantic Alliance, various ILO Conventions, and the Convention for the Suppression of Genocide.[27]

Some withdrawal clauses provide for 'circumstantial' restrictions, which prevent or allow denunciation to produce legal effects only upon the occurrence of specific events. An example of this can be found in the clauses

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25 VCLT, art 42(2). For a detailed analysis of different withdrawal clauses, see Cowell (n 12) 56.

26 See, Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) 2515 UNTS 3; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966) 660 UNTS 195; Convention on the Rights of the Child (adopted 20 November 1989) 1577 UNTS 3.

27 The North Atlantic Treaty (adopted 4 April 1949) 34 UNTS 243; Promotional Framework for Occupational Safety and Health Convention (No. 187) (adopted 15 June 2006); Worst Forms of Child Labour Convention (No. 182) (adopted 17 June 1999) 2133 UNTS 161; Convention on the Prevention and Punishment of Genocide (adopted 9 December 1948) 78 UNTS 277 art XIV.

contained in the four Geneva Conventions of 1949 that preclude denunciation from producing legal effects if the denouncing State is involved in an armed conflict.[28]

In the case of disarmament agreements, the exit clauses frequently provide for an obligation to give reasons for withdrawal, in accordance with Article 65 of the VCLT.[29] The obligation to provide reasons is also established by some non-proliferation treaties, the UN Arms Trade Treaty, as well as the UN Convention on the Law of the Sea.[30]

Frequently, the withdrawal clauses combine two or more of the above limitations, restricting the State's ability to terminate the agreement. Nevertheless, an analysis of international practice shows that in most cases, States diligently comply with the withdrawal provisions, respecting both terms of notice and procedural obligations.[31] The same applies to the obligation to provide reasons for withdrawal. Despite the general obligation stipulated in Article 65 of the VCLT, States appear to comply with the motivation requirement only if expressly provided for in the withdrawal

[28] See, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949) art 63.

[29] See, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (adopted 18 September 1997) 2056 UNTS 211 art 20; Convention on Cluster Munitions (adopted 30 May 2008) 2688 UNTS 39 art 20. Article 65 of the VCLT stipulates that 'the notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor'.

[30] UN Convention on the Law of Sea (adopted 10 December 1982) 1833 UNTS 3 art 317. Nevertheless, the Convention establishes that 'failure to indicate reasons shall not affect the validity of the denunciation'.

[31] For an extensive analysis in this regard, see Martina Buscemi and Loris Marotti, 'Obblighi procedurali e conseguenze del recesso dai trattati: Quale rilevanza della Convenzione di Vienna nella prassi recente? (2019) 4 Rivista di diritto internazionale 939.

rules of the agreement.[32] The obligation to give reasons of denunciation, for example, was recently applied in the withdrawal of Lithuania from the Convention against Cluster Bombs and in the denunciation of Russia of the 1990 Treaty on Conventional Armed Forces in Europe, motivated by the placement of conventional weapons by the North Atlantic Treaty Organization (NATO) in the territory of new Member States (Finland).[33]

B. Withdrawal from treaties without exit clauses

In the absence of specific withdrawal clauses in the treaty, the international legal regime to be applied is that of the VCLT, which is widely recognized to largely codify customary international law.[34]

In this regard, Article 56 (1) of the VCLT states that withdrawal from an international agreement which does not provide for exit clauses is generally not permitted, except when '(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty'.

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[32] See, for example, the latest declarations of withdrawal notified to the UN Secretary-General, none of which have been motivated: *Depositary Notification by the United States of America: Withdrawal,* C.N.71.2025.TREATIES-XXVII.7.d), 27 January 2025; *Depositary Notification by the Republic of Moldova: Withdrawal,* C.N.167.2024.TREATIES-XIX.37, 21 May 2024; *Depositary Notification by Costa Rica: Withdrawal,* C.N.531.2023.TREATIES-XIX.47 22 December 2023. More examples, available at *Depositary Notifications (CNs) by the Secretary-General* (n 9) <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en>.

[33] Further details, *Depositary Notification by Lithuania: Withdrawal,* C.N.347.2024.TREATIES-XXVI.6, 6 September 2024 and *Treaty on Conventional Armed Forces in Europe, Parties with reservations, declarations and objections,* Overheid.nl Treaty Database <https://treatydatabase.overheid.nl/en/Treaty/Details/004285_p.html#Russian%20Federation> accessed 16 January 2026.

[34] See, for instance, Anthony Aust and Oliver Dörr, 'Vienna Convention on the Law of Treaties' (2023) *Max Planck Enyclopedias of Public International Law,* paras 14-18 <https://opil.ouplaw.com/home/mpil> accessed 29 January 2026.

The first exception applies where the contracting States, while generally agreeing on the possibility of denouncing the treaty, have not provided for an ad hoc clause because they disagree on the specific terms and modalities regulating withdrawal.

The second exception establishes that, in the absence of specific exit rules, withdrawal may be exercised only with reference to certain types of treaties that, by their nature, are susceptible to denunciation. The VCLT does not specify which categories of treaties these are. However, in his second report, the Special Rapporteur on the Law of Treaties, Humphrey Waldock, argued that agreements on commercial, cultural, scientific matters, as well as those concerning military alliances or instituting mechanisms of arbitration, conciliation, or international organizations, may be denounced.[35]

Where the exceptions of Article 56 of the VCLT apply, the withdrawing State must notify its intention to the other contracting parties at least twelve months in advance, in accordance with Article 56 (2) of the VCLT.

This legal regime, which applies to treaties without withdrawal clauses, is only partially implemented in international practice. States often give immediate effect to withdrawal notices, in contravention of the 12-month notice period introduced in Article 56 of the VCLT.[36] Equally evident is the failure to comply with the obligation to motivate the withdrawal set out in Article 65. Despite some important exceptions, in most declarations of

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[35] Humphrey Waldock, *Second Report on the Law of Treaties*, Special Rapporteur, UN Doc A/CN.4/156 and Add1-3, *Yearbook of the International Law Commission* (1963) vol II 64.

[36] As explicitly stated by the International Law Commission, this specific term does not codify a customary norm, but was incorporated to promote the progressive development of international law (see, ILC, *Draft Articles on the Law of Treaties with Commentaries* (1966) II *Yearbook of the International Law Commission* 251, para 6). For instances of withdrawals inconsistent with this term, see, *Depositary Notification by United States: Withdrawal* C.N.487.2018.TREATIES-III.5, 12 October 2018 and *Depositary Notification by Republic of Korea: Withdrawal*, C.N.467.1997.TREATIES, 12 November 1997.

withdrawal from treaties without a specific regime, States notify their intention to withdraw without giving reasons.[37]

Consequently, States enjoy a broad right to withdraw in the absence of specific denunciation clauses. However, this is not the case for treaties establishing international organizations or those protecting human rights, where the lack of an exit clause often resulted in the impossibility of withdrawal.[38]

This analysis of the international legal framework governing withdrawal is essential to the case study proposed in this piece, as it serves as the benchmark against which African practice will be examined in the following sections.

[37] For examples of 'exceptions', see Letter dated 20 January 1965 from the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia addressed to the Secretary-General, UN Doc S/6157 (20 January 1965) and *Depositary Notification by Republic of Korea: Withdrawal*, C.N.467.1997.TREATIES, 12 November 1997, both widely motivated. For instances of withdrawals without reasons, see Buscemi and Marotti (31) 939. See also *Depositary Notification by United States: Withdrawal* C.N.487.2018.TREATIES-III.5, 12 October 2018 and *Depositary Notification by Colombia: Withdrawal* C.N.521.2017.TREATIES-XXI.5, 15 September 2017.

[38] See Indonesia's denunciation of the United Nations Charter, which was never considered as a withdrawal by the Organization. Its readmission took place by mere declaration and not through the legal procedure provided for in Article 4 of the Charter. The withdrawals of Hungary and Czechoslovakia from UNESCO in the 1950s, *Communications received from Hungary and Czechoslovakia* (1953) UN Doc 2 XC/6, and the withdrawals of other Socialist States from the WHO in 1949 (*Official Records of the World Health Organization*, No 17, *Report of the Executive Board*, Third Session held in Geneva, 21 February–9 March 1949), were considered to turn them into 'inactive members'. See also Feinberg (14) 189.

III. Distinctive Trends in the Regulation of Withdrawal, in Treaties and Domestic Law of African States

Building on the foregoing considerations, this section will analyze the legal regime of withdrawal, as it emerges from the regional and domestic legal instruments of African States.

In this regard, the analysis first examines the denunciation clauses embedded in the approximately 180 agreements concluded within the African organizations, before evaluating the constitutional provisions of African States that specifically regulate withdrawal.[39] The examination of this body of law will allow to identify the recurring legal elements which are indicative, to some extent, of the *idem sentire* of African States in the matter of withdrawal.

1. The Regulation of Withdrawal in the African Continent and Confirmations of International Practice

An analysis of the withdrawal clauses contained in the 'African treaties' reveals that the limitations on the right of withdrawal generally do not differ from those established in other international agreements.[40]

African treaties contain obligations such as written notification or compliance with notice periods, which may vary significantly.[41] For

[39] The research has shown that only 91 (51%) out of 179 treaties adopted in the framework of the main African organizations provide specific withdrawal clauses. It has also demonstrated that out of the 54 Constitutions examined, only 8 expressly regulate withdrawal. At the international level, according to the website 'Constitute Project', curated by the University of Texas and the University of Chicago, only 43 out of 190 Constitutions address the issue of withdrawal. More details at, <https://www.constituteproject.org/> accessed 16 January 2026.

[40] For the notion of 'African treaties', see supra (n 2).

[41] See the Agreement on Customs Cooperation (South Africa – Malawi) (May 27, 2021), as well as Constitutive Act of the African Union (signed 11 July 2000)

example, the Memorandum of Understanding between the SADC and the Association of Chambers of Commerce of Southern African Countries provides for a 3-month notice period, whereas the Agreement Establishing the African Continental Free Trade Area provides for a longer notice period of 24 months.[42] In some cases, denunciation clauses are more complex. They can impose temporal limitations that prohibit States Parties from withdrawing before a minimum period has elapsed since the treaty's entry into force. This is the case for many bilateral investment protection treaties or some agreements adopted within the frameworks of continental and regional organizations.[43]

Other African treaties, including the ECOWAS Convention on Small Arms and Light Weapons and other instruments adopted under the auspices of the

UNTS 2158; Revised Treaty of the Economic Community of West African States (ECOWAS) (signed 24 July 1993) UNTS 2373; Declaration and Treaty of Southern African Development Community (SADC) (signed 17 August 1992).

42 Memorandum of Understanding between the Southern African States Development Community and the Association of Chambers of Commerce of Southern African Countries (adopted 7 August 2000); Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018) 58 ILM 1028.

43 See Agreement on the Reciprocal Promotion and Protection of Investments (Republic of the Congo – Republic of Angola) (signed 9 September 2010) art 11; Agreement for the Promotion and Protection of Investments (Arab Republic of Egypt – the Federal Democratic Republic of Ethiopia) (signed 27 July 2006). Ratified in Ethiopia as Proclamation No. 517/2007, art 13; Agreement on the Reciprocal Promotion and Protection of Investments (People's Democratic Republic of Algeria – Government of the Republic of Mali) (signed 11 July 1996), JORADP N° 097 del 27-12-1998, art 11. See, also African Convention on the Conservation of Nature and Natural Resources, (signed 11 July 2003) art XL; ECOWAS Energy Protocol (signed 31 January 2003); SADC Agreement on the Establishment of the Zambezi Watercourse Commission (signed 13 July 2004).

African Union, include denunciation clauses that require States to give reasons for withdrawal, in accordance with Article 65 VCLT.[44]

In addition to these clauses reflecting prevailing international practice, African treaties are also characterized by distinctive withdrawal provisions, which are examined in detail in the following subsection.

2. Peculiar Aspects of the Continental Regime of Withdrawal

Treaties concluded within the main African continental and regional organizations exhibit atypical rules of withdrawal, specifically aimed at ensuring the continuity and stability of international obligations undertaken by African States.[45]

This is exemplified by certain withdrawal rules that provide the withdrawing State with the right to unconditionally revoke its notice before it becomes effective, with the aim of restoring international commitments. These clauses are frequently found in bilateral and multilateral treaties concluded between African countries, as well as in agreements adopted within the

[44] ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials (signed 14 June 2006) art 32(C). See also The African Nuclear Weapon Free Zone Treaty (signed 11 April 1996) art 20; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (signed 23 October 2009) art XIX, para 1. The duty to state reasons is also stipulated in the revised African Charter on Maritime Transport (signed 26 July 2010) art 52.

[45] For the purposes of this article, the term 'continental organization' exclusively denotes the African Union (AU). Conversely, 'regional organizations' refers to those organizations composed solely of African States within a defined geographical proximity, including but not limited to the ECOWAS, SADC, and the EAC.

regional organizations.[46] The 'right to revoke withdrawal' is also established in all founding treaties of the African organizations: in Article 31 of the Constitutive Act of the African Union, in Article 91 of the Founding Treaty of ECOWAS, in Article 34(2) of the SADC, in Article 91 of the Constitutive Act of the Economic Community of Central African States and in Article 145 of the East African Community Treaty (TEAC).[47]

The 'right to revoke withdrawal', while a distinctive feature of certain African treaties, may seem legally insignificant, as it merely codifies what is generally considered an inherent aspect of the consensual nature of international treaties. Indeed, the 'right to revoke' is also provided for in Article 68 of the VCLT, according to which a declaration of withdrawal 'may be revoked at any time before it takes effect'. However, Article 68 of the Convention does not codify a rule of customary international law. This view is shared not only by legal doctrine but also by the International Law

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[46] For bilateral and multilateral treaties, see the Agreement Concerning the Equitable Sharing in the Development, Conservation and Use of Their Common Water Resources (Federal Republic of Nigeria – Republic of Niger) (signed 18 July 1990); Agreement Concerning the River Niger Commission and the Navigation and Transport on the River Niger (signed 25 November 1964). For treaties adopted within African organizations, see the OAU Convention Governing Specific Aspects on Refugee Problems in Africa, (adopted 10 September 1969) 1001 UNTS 45; AU Convention of the African Energy Commission, (adopted 11 July 2001); ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, (adopted 10 December 1999); the ECOWAS Protocol on Education and Training, (adopted 1 January 2003).

[47] As an example, see Treaty of the Economic Community of West African States (adopted 24 July 1993), art 91, according to which 'Any Member State wishing to withdraw from the Community shall give to the Executive Secretary one year's notice in writing who shall inform Member States thereof. At the expiration of this period, *if such notice is not withdrawn*, such a State shall cease to be a member of the Community'.

Commission (ILC).[48] In its commentary on the Convention, the ILC noted that the procedural rules set out in Articles 65 to 68 were introduced as part of the progressive development of international law.[49] With reference to Article 68, moreover, the Commission specified that 'certain Governments had questioned the desirability of stating the rule in a form which admitted a complete liberty to revoke a notice of denunciation, termination, withdrawal or suspension prior to the moment of its taking effect'.[50]

Such perplexities, which suggested limiting the unilateral 'right to revoke withdrawal,' still exist today, at least with reference to agreements establishing international organizations. In the Brexit case, for example, not only scholars, but also British courts have denied the possibility of the United Kingdom to unilaterally revoke withdrawal from the Union.[51] The Council

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[48] See, Christina Binder, 'The VCLT Over the Last 50 Years: Developments in the Law of Treaties with a Special Focus on the VCLT's Rules on Treaty Termination' (2019) 24 Austrian Review of International and European Law (2019) 89; Christian J Tams, 'Treaty Breaches and Responses' in Tams and others (eds), *Research Handbook* (n 2) 479.

[49] ILC, *Draft Articles on the Law of Treaties with Commentaries* (1966) II *Yearbook of the International Law Commission* 263, para 6.

[50] Ibid.

[51] See, Paul Eden, 'The Revocability of Instruments of Withdrawal from Multilateral Treaties with Particular Emphasis on the United Kingdom's Article 50 TEU Notification' (2018) <https://ssrn.com/abstract=3238431> accessed 27 March 2025; Gino Naldi and Konstantinos Magliveras, 'The Right to Revoke Withdrawal Notices from International Organizations: The Case of Brexit and the European Union' (2021) 28 Maastricht Journal of European and Comparative Law 30; Mariana Alvim, 'The Right to Withdraw the Notification to Leave the European Union under Article 50 TEU: Can We Still Save the Marriage?' (2017) 3 EU Law Journal 139; Patrick Ostendorf, 'The Withdrawal Cannot be Withdrawn: The Irrevocability of a Withdrawal Notification under Article 50 (2) TEU (2017) European Law Review 767; European Parliament, The (ir-)revocability of the withdrawal notification under Article 50 TEU, Directorate General for Internal Policies, PE 569.820, March 2018. For jurisprudence, see *Miller v Secretary of State*

of the European Union has also opposed the absolute right to revoke withdrawal, as demonstrated in the *Wightman case*. Here, the Council argued that in the lack of a specific provision in the Treaty on European Union, Article 50 had to be interpreted 'in the sense that it permits revocation, but only if the European Council unanimously agrees to it'.[52]

While these considerations raise doubts on the consolidation of the 'right to revoke' in international relations, they also highlight the legal value of the withdrawal clauses provided for in the African treaties. These clauses demonstrate that the right to revoke withdrawal—specifically intended to restore and ensure the continuity of international obligations—is widely recognized in the African treaty practice, while remaining contested at the international level.[53]

However, the inclusion of these 'revocation clauses' in African agreements is not the only defining feature of the continental legal regime on withdrawal.[54] In this regard, Article 145 of the TEAC is of relevance, which allows withdrawal only if authorized by a resolution of the parliamentary body of the withdrawing State adopted by a majority of at least two-thirds.[55]

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for Exiting the European Union [2016] EWHC 2768 (Admin) [10], [11]; *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] EWHC 2768 (Admin) [26]; *McCord's (Raymond) Application* [2016] NIQB 85 (Maguire J). For an opposite position: C-621/18 *Andy Wightman and Others v Secretary of State for Exiting the European Union* [2018] ECLI:EU:C:2018:999.

52 *Andy Wightman and Others v Secretary of State for Exiting the European Union* (C-621/18) ECLI:EU:C:2018:999 [42].

53 Recently, the withdrawing States from ECOWAS have been granted the right to revoke withdrawal even beyond the time limits provided by the exit clause of the Organization's founding treaty. *Final communique, Sixty-Sixth Ordinary Session of the Authority of Heads of State and Government*, Abuja, 15 December 2024 [43].

54 In this section, the phrases 'African law on withdrawal' and the 'Law of African States on withdrawal' refer to the legal regime on withdrawal emerging from the analysis of the African treaties and from the domestic law of the States of the continent.

55 TEAC (63) art 145.

By expressly recognizing the 'right to denounce treaties' for national parliaments, this provision is the starting point for broader considerations on the attribution of the competence to withdraw. Article 145 of the EAC founding treaty, if examined in the light of African States' practice, becomes an expression of a continental trend moving in the opposite direction to international practice.

Outside the African continent, identifying a uniform practice for the attribution of the power of withdrawal proves complex. Several scholars have noted that the power of withdrawal, which is rarely regulated by the domestic legal systems, varies in form and characteristics from one State to another. In some cases, the 'right to withdraw' is assigned exclusively to the executive power,[56] in others to the Head of State,[57] and in others entirely to the legislative body.[58] Sometimes, national law distinguishes certain types of treaties that can be denounced by the government from others that require parliamentary approval.

More frequently, the lack of a specific regime for withdrawal has fostered political and jurisprudential practices that confer the power to withdraw to the Head of State or the executive body. This is the case in the United States, where the domestic law's silence on the competence to withdraw has favored a political practice, partially confirmed by case law, that recognizes the President's right to denounce international treaties.[59] An analogous approach

[56] Constitution of the People's Republic of China (adopted 1982, revised 2004) art 81; Constitution of Guatemala (adopted 1985, revised 1993) art 183.

[57] Constitution of Norway, (adopted 1814, revised 2016) art 26.

[58] Constitution of Argentina, (adopted 1853, revised 1994) art 75, para. 24.

[59] For a judicial decision on the power of withdrawal, see *Goldwater v Carter* 617 F.2d 697 (DC Cir 1979). President Trump's Executive Order 14199, issued on February 4, 2025, and entitled 'Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations' constitutes a salient demonstration of this presidential withdrawal power. See, also, Curtis A Bradley and Jack L

was adopted in the United Kingdom, where the Supreme Court, in the Brexit case, established that the right to denounce an international agreement belongs to the government.[60] This attribution of competence does not apply to cases involving individual rights and the constitutional order of the State.[61] In this international trend, in which the authority to withdraw is typically vested in the Head of State or the executive, the decision of the Supreme Court of the Philippines on the country's withdrawal from the Rome Statute is particularly relevant. In its judgment, the Court of Manila dismissed petitions submitted by some Senators aimed at annulling the Philippines' withdrawal insofar as it lacked parliamentary authorization.[62]

African practice appears to follow an opposite trend; where the power of withdrawal is regulated by domestic law, it is consistently vested in the legislative body.[63] This is the case of Angola, where 'the National Assembly shall be responsible for: […] Approving withdrawal from treaties, conventions, agreements and other international instruments'.[64] The Constitution of the Central African Republic is similar and affirms that '[t]he ratification or the revocation may only intervene after the authorization of the Parliament'.[65] Provisions of the same character can be found in the Constitutions of Cape Verde, Mozambique, Malawi, and Namibia.[66] The

Goldsmith, 'Presidential Control over International Law' (2018) 131 Harvard Law Review 1207.

60 *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] EWHC 2768 (Admin) [55].

61 Ibid, [86] – [87].

62 *Pangilinan and Others v Cayetano and Others* (Supreme Court of the Philippines, G.R. Nos 238875, 239483 and 240954, 16 March 2021).

63 See, supra footnote (39).

64 Constitution of Angola (adopted 2010) art 161(L).

65 Central African Republic Constitution (adopted 2016) art 91, para. 2.

66 Constitution of Cape Verde (adopted 1980, revised 1992) art 12 in conjunction with Article 190; Constitution of Mozambique (adopted 2004, revised 2007) art 179, para 2, lett. T; Constitution of Malawi (adopted 1994, revised 2017) art 211; Constitution of Namibia (adopted 1990, revised 2014) art 63(2)(d) and art 143.

Constitutions of Malawi and Namibia regulate only the withdrawal from treaties that came into force before the Constitution. Nevertheless, in such cases, the power of withdrawal is vested in the parliamentary body.

In certain cases, despite the absence of an explicit constitutional provision, the power of withdrawal has nonetheless been attributed to the legislative body. Burundi's denunciation of the ICC Statute, for example, was notified after the adoption of a decree by the Parliament, although the Constitution is silent on the matter.[67] The African jurisprudential practice also appears to be moving in this direction, leaning towards the attribution of withdrawal power to the legislative authority. In this regard, it is important to recall South Africa's withdrawal from the Rome Statute, which was annulled by the Constitutional Court due to the absence of prior parliamentary authorization.[68] The Pretoria Court, applying the theory of the '*acte contraire*', stated that if participation in an international treaty requires parliamentary authorization, a resolution of the same body is also necessary for withdrawal.[69] The same theory was applied by the Supreme Court of Ghana in the case *John Akparibo Ndebugre v. Attorney General, Minister of Justice*.[70] Although the latter case concerned an agreement concluded between the State and an oil extraction company, the Court ruled that an agreement 'ratified' by Parliament could only be terminated by a resolution of the same body.[71]

Considering the above, it is evident that, in African jurisdictions, when the competence to withdraw is expressly regulated, it is preferably conferred on

67 See Assembly of the African Union, *Withdrawal Strategy*, Twenty-Eighth Ordinary Session, Addis Ababa, 30 - 31 January 2017, Decision on the International Criminal Court, DOC. EX.CL/1006(XXX).

68 *Democratic Alliance v Minister of International Relations and Cooperation* (High Court of South Africa, Case No 83145/2016, 22 February 2017).

69 Ibid [46].

70 *John Akparibo Ndebugre v Attorney General, Minister of Justice* (Supreme Court of Ghana, Accra A.D. 2016 No J1/5/2013, 20 April 2016).

71 Ibid [conclusion].

the legislative body. This trend contrasts with international practice, where the power to denounce is generally assigned to the Head of State or executive bodies. However, in the absence of a specific domestic legal framework, the power to withdraw in African States generally lies with the executive, in line with international practice. This is illustrated by the recent withdrawals of Mali, Niger, and Burkina Faso from ECOWAS, which will be discussed in more detail in the following section.

On the basis of this extensive analysis of the 'African Law' on withdrawal, it seems useful to propose a systematic reading of the two main continental trends examined in this subsection: 'the right to revoke withdrawal' and the attribution of the 'competence to denounce' to the parliamentary bodies.

As indicated at the beginning of this analysis, both practices under consideration share the same objective, namely, to foster the 'continuity' of international commitments undertaken by African States. The right to revoke withdrawal, for instance, could be understood as a legal mechanism to unilaterally restore treaty obligations and ensure the preservation of conventional engagements previously accepted by the States of the continent. Similarly, attributing the power of withdrawal to parliamentary bodies is an attempt to make the withdrawal procedure more difficult. It also serves to protect the 'power to denounce' from the political instability that often characterizes African Governments. Accordingly, emerging African practices regarding withdrawal seem to be a necessary legal response to the continent's political instability, intended specifically to ensure the continuity of international commitments accepted by African States.

IV. The Exercise of Withdrawal in the Recent Practice of African States

Building upon the analysis of 'African law' on withdrawal, this section examines the specific methods and procedures through which States across the continent have denounced international treaties in practice.

1. Withdrawal in the African Continent: An Overview

Over the past decade, African States have denounced international agreements of different natures and forms. Withdrawal declarations have involved treaties establishing international tribunals, as evidenced by the notifications of South Africa, Burundi and Gambia to the UN Secretary-General of their withdrawal from the Statute of the ICC in 2016.[72] Although not withdrawals in the strict sense, the decisions of Côte d'Ivoire, Benin, Rwanda, Tanzania and Tunisia to withdraw from the jurisdiction of the African Court on Human and Peoples' Rights may also be mentioned, as they have significantly restricted the Court's capacity to play a role in the protection of human rights on the continent.[73] Kenya withdrew from the International Court of Justice's (ICJ) jurisdiction in 2021, adding to the list of African States attempting to evade international jurisdiction, which is not

[72] While South Africa and Gambia revoked their withdrawal declarations, Burundi's denunciation became effective on 27 October 2017. The notifications of South Africa and Gambia stem from the arrest warrant of President Al Bashir of Sudan, issued by the ICC in 2009, and from the proceedings initiated by the Court against the President and Deputy President of Kenya, William Samoei Ruto and Uhuru Muigai Kenyatta. Indeed, from 7 to 15 June 2015, South Africa hosted several institutional events of the African Union and faced 'the conflicting obligation to arrest President Al Bashir under the Rome Statute, the obligation to the AU to grant immunity in terms of the Host Agreement, and the General Convention on the Privileges and Immunities of the Organization of African Unity of 1965' (see *Declaratory statement by the Republic of South Africa*, C.N.862.2016.TREATIES-XVIII.10, 2).

[73] The official declarations of Côte d'Ivoire, Benin, Rwanda, Tanzania and Tunisia to withdraw from the jurisdiction of the African Court on Human and Peoples' Rights are available at: <www.african-court.org/wpafc/declarations/>, accessed 21 January 2026.

infrequently perceived by these States as a limitation of national sovereignty.[74]

In other instances, withdrawal has involved treaties establishing international organizations. This occurred, for example, in 2021, when Uganda withdrew from the International Coffee Organization, due to unfavorable commercial conditions for coffee produced on the African continent.[75] More recently, on 28 January 2024, after having ended cooperation within the G5Sahel in 2023,[76] three West African States – Mali, Niger, and Burkina Faso – denounced the founding treaty of ECOWAS in response to the sanctions imposed on them by the Organization.[77]

Recent African States' practice also includes withdrawal declarations aimed at terminating bilateral treaties, such as those safeguarding investments. South Africa, Niger, Tanzania, Burkina Faso, Kenya, and Mali recently ended investment protection agreements with Spain, the Netherlands, Germany, Belgium, Switzerland, and France.[78] In other cases, withdrawal has affected bilateral military cooperation agreements. Since 2023, several

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74 See, *Depositary Notification by Kenya: Withdrawal*, C.N.281.2021.TREATIES-I.4, 24 September 2021. See also, Assembly of the African Union, *Withdrawal Strategy*, Twenty-Eighth Ordinary Session, Addis Ababa, 30 - 31 January 2017, Decision on the International Criminal Court, DOC. EX.CL/1006(XXX).

75 Among the main reasons for its withdrawal, Uganda highlighted 'The lopsided classification of coffee by the International Coffee Organization (ICO) which only lists Brazilian and Colombian types of coffee and refers to the rest under the category 'Others''. For more details, see International Coffee Organization, Withdrawal of Uganda from the International Coffee Agreement 2007, Press Release PR 325/22, 22 February 2022.

76 Frederick Cowell, 'ECOWAS Withdrawal and the law of treaty withdrawal' (EJIL:Talk! 2024) <www.ejiltalk.org/ecowas-withdrawal-and-the-law-of-treaty-withdrawal/> accessed 4 January 2025.

77 *Joint communique by Burkina Faso, the Republic of Mali and the Republic of Niger*, 28 January 2024.

78 For more details, see Jonathan Lang and Bowman Gilfillan 'Bilateral Investment Treaties - a shield or a sword?' (*Bowman Gilfillan Africa Group,* 2016).

West African States have terminated defense treaties with France, the USA, and other Western States.[79] The same countries have also terminated some double taxation treaties, which were considered unfair to national interests.[80]

This recent African practice of withdrawal exhibits several distinct features and legal implications regarding two specific aspects: 1) the reasons for continental States to terminate conventional obligations; 2) the modalities and procedures through which African countries exercise withdrawal. The following subsection, therefore, examines these aspects, with the aim of highlighting the most interesting features of treaty withdrawal by African countries.

2. Withdrawal as a Reaction to Continuing Forms of 'Legal Imperialism'?[81]

An analysis of African countries' withdrawals shows that they demonstrate considerable diligence in articulating detailed reasons for their withdrawal. When withdrawing from an international treaty, African States often cite unequal legal relations, double standards, or even persecution, thereby fulfilling the obligation to state reasons pursuant to art. 65 VCLT.

A clear illustration of this is South Africa's declaration of withdrawal from the ICC, where the African country, while providing extensive reasons for its denunciation, pointed out the 'inequality and unfairness in the practice of the ICC that do not only emanate from the Court's relationship with the Security Council, but also by the perceived focus of the ICC on African

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[79] For instance, see the Institutional website France Diplomacy at the following link: <www.diplomatie.gouv.fr/en/country-files/burkina-faso/france-and-burkina-faso-65116/>, accessed 21 January 2026.

[80] *Communique conjoint n° 001 de la République du Mali et de la République du Niger: Les deux pays dénoncent deux conventions désavantageuses en matière fiscale avec la France* (Bamako and Niamey, 5 December 2023).

[81] For a definition of 'legal imperialism', see supra footnote 4.

states.'[82] This unequal and unfair treatment of African States has also been highlighted by the Gambian Minister of Information, according to whom withdrawal from the Rome Statute is inevitable because the Court is used 'for the persecution of Africans and especially their leaders.'[83] The same criticisms were made by the Kenyan President Uhuru Kenyatta against the ICJ in 2021. Withdrawing the declaration of acceptance of the Court's jurisdiction, the President recalled that 'a trend has emerged of some supposedly international organizations being deployed as political tools against African countries. Sadly, this misfeasance has infected the ICJ.'[84]

In other instances, it is not the proceedings initiated by an international court that are perceived as unfair, but rather the legal relationships arising from certain bilateral agreements. This is the case of Mali and Niger's denunciations of the double taxation agreements with France, where the two African countries denounced the '*caractère déséquilibré de ces Conventions*.'[85] Similarly, the spokesman of the Niger junta called the military cooperation

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[82] *Depositary Notification by South Africa: Withdrawal*, C.N.786.2016.TREATIES-XVIII.10, 19 October 2016.

[83] Statement by the Gambian Minister of Information, reproduced in Assembly of the African Union, *Withdrawal Strategy*, DOC. EX.CL/1006(XXX) [25]. According to Ssenyonjo, one of the main reasons behind the Gambia's withdrawal was also 'to ensure that state officials, including sitting heads of state [...] escape possible criminal investigations'. Manisuli Ssenyonjo, 'State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and The Gambia' (2018) 29 Criminal Law Forum 63, 68.

[84] *Statement By H.E. Hon. Uhuru Kenyatta on the International Court Of Justice Judgement In Maritime Delimitation Case* (Embassy of the Republic of Kenya, 18 October 2021) <www.kenyaembassyaddis.org/2021/10/statement-by-h-e-hon-uhuru-kenyatta-on-the-international-court-of-justice-judgement-in-maritime-delimitation-case/> accessed 25 January 2026.

[85] *Communique conjoint n° 001 de la République du Mali et de la République du Niger* (80).

agreement with the United States 'profoundly unfair'.[86] The joint declaration of withdrawal from the G5Sahel by Burkina Faso and Niger follows a similar pattern. Here, the two States declared themselves no longer willing to accept '*un partenariat dévoyé et infantilisant qui nie le droit à la souveraineté de nos peuples*.'[87]

From this practice of the right of withdrawal and patterns of argumentation accompanying it, it is evinced that this right has been exercised by African States, first and foremost, as a tool to reshape those legal relations perceived as unfair and relegating the continent's States to a position of relative disadvantage to the other parties of the treaty.[88] For African States, withdrawal from international treaties is thus conceived as an instrument of 'social emancipation' that allows them to assert their sovereignty within the international community. By exercising withdrawal, African countries reorganize relations with other States in a perspective of greater equality and justice. Indeed, this objective has been partially achieved with regard to the work of the ICC. Following the collective withdrawals of 2016, the Court has sought to reorganize its approach towards a perspective that is no longer

[86] Video message by Colonel Amadou Abdramane on national television on 16 March 2024, partially reproduced at TV5MONDE Info, 'Le Niger dénonce l'accord de cooperation militaire avec les États-Unis' (17 March 2024) <www.youtube.com/watch?v=fYm4r_Zum_w> accessed 21 January 2026.

[87] *Communique conjoint n° 001 de la République du Burkina Faso et de la République du Niger* (adopted 02 December 2023) Text available at : <www.lesahel.org/communique-conjoint-n001-du-burkina-faso-et-de-la-republique-du-niger/> accessed 21 January 2026.

[88] On the specific topic of 'unequal treaties', see Craven Matthew, What Happened to Unequal Treaties? The Continuities of Informal Empire (2005) *Nordic Journal of International Law*, 335; Gerry Simpson, *Great Power and Oulaw States, Unequal Sovereigns in the International Legal Order* (Cambridge University Press 2004).

'Afrocentric'. Since 2017, investigations have also been launched in Georgia, Afghanistan, Myanmar, Palestine, the Philippines, Venezuela, and Ukraine.[89]

Redefining conventional relations in a balanced manner has become particularly necessary in relation to the former colonial powers, which are viewed as symbols of an ever-present legal imperialism that African States no longer tolerate. In the withdrawals from the ICC, for example, African countries have pointed out that the Court has been particularly diligent in proceeding against leaders of the continent 'while ignoring crimes committed by the West (…)'.[90] Similar reasons can be found in the joint withdrawals from ECOWAS by Niger, Mali and Burkina Faso, where it is contended that the organization, acting 'under the influence of foreign powers, violating its fundamental principles has become a threat to its member states and its people who were rather expecting joyfulness thereof.'[91] In the same sense, it is worth recalling the reference '*partenariat dévoyé et infantilisant*' mentioned in the withdrawal of Burkina Faso and Niger from the G5Sahel,[92] '*l'attitude unilatérale du partenaire français*' in Mali's denunciation of the Cooperation Agreement with France,[93] and '*l'attitude*

89 While this practice may appear attributable to an escalation in conflicts, it should be noted that since 2016, the Court has authorized the Prosecutor to initiate investigations into alleged crimes dating back to 2003 (Afghanistan), 2008 (Georgia), and 2011 (Philippines). This suggests a potential shift in the Court's strategic approach.

90 Statements by the Gambian Minister of Information, reproduced in Assembly of the African Union, *Withdrawal Strategy*, DOC. EX.CL/1006(XXX)[25].

91 The phrase "foreign powers" probably refers to France, which on several occasions called for ECOWAS military intervention in Niger after the coup d'état of 2023. *Joint communique by Burkina Faso, the Republic of Mali and the Republic of Niger*, 28 January 2024, 1.

92 *Communique conjoint n°001 de la République du Burkina Faso et de la République du Niger* (87).

93 *Communiqué n. 029 du Gouvernement de la transition: Annexe à la lettre datée du 2 mai 2022 adressée à la Présidente du Conseil de sécurité par le Représentant permanent du Mali auprès de l'Organisation des Nations Unies* (Bamako, 2 May 2022).

hostile persistante de la France contre nos Etats' in the communiqué of Niger and Mali's withdrawal from the double taxation agreements.[94] Using the sovereigntist argument, the Chadian authorities also denounced the military assistance agreement with France on 28 November 2024, stating that '[a]fter 66 years since the proclamation of the Republic of Chad, the time has come for Chad to assert its full and complete sovereignty.'[95]

This extensive regional practice on withdrawal indicates that African States tend to be careful in providing detailed reasons for their denunciations. As a result of their colonial past, African countries perceive—more than other States—the need to formally denounce unfair legal relations and to publicly explain reasons for their withdrawals.

From a legal standpoint, the above-mentioned practice clearly demonstrates that African States, by complaining about discriminatory treatments, fully implement the obligation to give reasons, set out in Article 65(1) of the VCLT—an obligation frequently ignored at the international level.[96]

In conclusion, it seems that the implementation of the obligation to give reasons constitutes not only a peculiar feature of African practice but also a

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[94] *Communique conjoint n°001 de la République du Mali et de la République du Niger* (80).

[95] The news was reported by several international media. See, for instances: Oman Al Yahyai, 'Chad ends defence pact with France nixing its military presence' *Euronews* (29 November 2024) <www.euronews.com/2024/11/29/chad-ends-defence-pact-with-france-in- effort-to-assert-sovereignty> accessed 21 January 2026; Chad ends military cooperation with France Aljazeera (30 November 2024) <www.aljazeera.com/news/2024/11/29/chad-ends- military-cooperation-with-france> accessed 21 January 2026.

[96] For several instances, see footnotes (32) and (37) but also *Depositary Notification by Russian Federation: Withdrawal*, (C.N.297.2024.TREATIES-XXVII.1.a) 23 July 2024). For a systematic analysis of the international practice on the implementation of the obligation to give reasons, see also Buscemi and Marotti (31) 939.

legal means to denounce colonial relations and to reject the remaining forms of legal imperialism.

3. 'Collective Withdrawal' as a Distinctive Element of Recent African Practice on Withdrawal

Often driven by the same needs and political interests, African countries not infrequently exercise withdrawal in a collective form, i.e. by denouncing simultaneously and on the same grounds one or more international treaties.[97]

Regarding this pattern of legal practice, it is useful to recall again the case of South Africa, Burundi, and Gambia, which collectively notified the UN Secretary-General of their intention to withdraw from the Rome Statute.[98] On that occasion, the African Union also played a significant role by adopting the so-called 'Withdrawal Strategy' (WS)—a document aimed at promoting institutional reforms of the ICC and providing Member States with helpful information on collective withdrawal and its implications.[99]

97 Although there is no commonly accepted definition of 'collective withdrawal', see Laurence R. Helfer, 'Exiting treaties' (2005) Virginia Law Review 1636; Laurence R. Helfer, 'Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking' (2004) Yale Journal of International Law 55-59; Assembly of the African Union, *Withdrawal Strategy*, Twenty-Eighth Ordinary Session 30 - 31 January 2017 Addis Ababa, *Decision on the International Criminal Court*, DOC. EX.CL/1006 (XXX).

98 For more details, see supra n (72).

99 The *Withdrawal Strategy* (67) and the previous Assembly of the African Union, *Decision on Africa's Relationship with the International Criminal Court (ICC),* Ext/Assembly/AU/Dec.1(Oct. 2013) (12 October 2013) are the most important AU reactions to the proceedings launched by the ICC against African Leaders. Nevertheless, the legal and political value of the Withdrawal Strategy is more nuanced than it may appear. For example, Makaza states that 'the [Withdrawal Strategy Document (WSD)] neglects to give either an explicit instruction for more African States to withdraw from the Court, or a timeframe for the execution of the strategy. As a result, the WSD is non-binding'. Dorothy Makaza, 'Towards

The recent withdrawal of Mali, Niger, and Burkina Faso from the Treaty establishing the Economic Community of West African States also has a 'collective character'. After being suspended from ECOWAS due to the military coups,[100] the Sahel States issued a joint *communiqué* to terminate their conventional obligations, denouncing the imposition of what they called 'illegitimate, inhuman and irresponsible sanctions.'[101] The three military juntas have also collectively withdrawn from the G5Sahel, after having established the Alliance of Sahel (AES), a new organization aimed at setting up 'an architecture of collective defense and mutual assistance for the Contracting Parties'.[102]

Afrotopia: The AU Withdrawal Strategy Document, the ICC, and the Possibility of Pluralistic Utopias' (2017) 60 *German Yearbook of International Law* 481. See also, Manisuli Ssenyonjo, 'African States Failed Withdrawal from the Rome Statute of the International Criminal Court: From Withdrawal Notifications to Constructive Engagement' (2017) 17 International Criminal Law Review 749; Patryk I Labuda, 'The African Union's Collective Withdrawal from the ICC: Does Bad Law make for Good Politics?' (EJIL:Talk! 2017) <www.ejiltalk.org/the-african-unions-collective-withdrawal-from-the-icc-does-bad-law-make-for-good-politics/> accessed 28 March 2025.

[100] Mali, Burkina Faso and Niger have been suspended from the ECOWAS Institutions by ECOWAS in 2021, 2022 and 2024, respectively, for unconstitutional changes of government. In this regard, see the ECOWAS Committee, *Communique Extraordinary Summit on the Political Situation in Mali* (Accra, 30 May 2021), where the Heads of State and Government of the Community 'reaffirm the importance and necessity of respecting the democratic process for ascending to power' and decide 'to suspend Mali from ECOWAS Institutions in line with ECOWAS provisions.'

[101] *Joint communique by Burkina Faso, the Republic of Mali and the Republic of Niger*, 28 January 2024.

[102] For details on the withdrawals from G5Sahel, see the *Communique Conjoint n. 001 du Burkina Faso et de la République du Niger* (114). When Mali, Niger and Burkina Faso left the G5Sahel, the two remaining Members, Chad and Mauritania, announced the dissolution of the Organization. See the *Joint Communiqué by*

In Africa, 'collective withdrawal' —or, at least, 'coordinated withdrawal'— has also been exercised in respect of bilateral treaties considered unfair by African countries. For example, the Member States of the AES, acting together, have adopted a common strategy, collectively denouncing the military and fiscal cooperation treaties concluded with France and the United States. Specifically, between 2022 and 2024, Burkina Faso, Niger, and Mali denounced the defense cooperation treaties concluded with Paris in 1961, 1977, and 2014, respectively.[103] Although affecting separate bilateral treaties, in some cases the withdrawal was notified by means of a joint *communiqué*, as was the case for the tax cooperation treaties concluded by Niger and Mali with France in 1965 and in 1972.[104]

From a legal perspective, it is worth noting that, when collectively leaving treaties without withdrawal clauses, African States provide a very short or no notice period for their denunciations. This practice indicates that the 12-

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Islamic Republic of Mauritania, Republic of Chad on G5-Sahel (Agence Mauritanienne de l'Information, 5 December 2023) <https://ami.mr/en/archives/12844> accessed January 25, 2026. Among authors, see, David Doukhan, 'The G5 Sahel: The End of the Road' (International Institute for Counter-Terrorism, 2024) <https://ict.org.il/the-g5-sahel-the-end-of-the-road/> accessed January 25, 2026. On the Alliance of Sahel, see Charter of Liptako-Gourma Establishing the Alliance of Sahel States (adopted 16 September 2023).

[103] Accord d'assistance militaire technique entre la République française et la République de Haute-Volta (adopted 24 April 1961); Agreement on Technical Military Co-Operation (France – Niger) (adopted 19 February 1977); Traité de coopération en matière de défense (France - Mali) (adopted 16 Juillet 2014).

[104] *Communique conjoint n° 001 de la République du Mali et de la République du Niger* (107); Convention tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative en matière fiscale (France - Niger) (signed 1 June 1965) JO 13 July 1966 ; Convention tendant à éviter les doubles impositions et à établir des règles d'assistance réciproque en matière d'impôts sur le revenu, d'impôts sur les successions, de droits d'enregistrement et de droits de timbres (France - Mali) (signed 22 September 1972) JO 17 May 1975.

month notice established by Article 56 of the VCLT has not yet been consolidated in the African continent.[105]

More interesting is the attempt by African countries to exercise 'collective withdrawal' in violation of the notice period, despite the treaty's withdrawal clauses stipulating it. This is what occurred in the case of 'collective withdrawal' from ECOWAS. In the joint *communiqué,* the withdrawing States declared 'to withdraw their countries—Burkina Faso, Mali, and Niger—from the Economic Community of West African States, with immediate effect' even though the Community's founding treaty provides for a one-year notice period.[106] Also, Mali and Niger jointly denounced their double taxation agreements with France, providing three months' notice, thereby ignoring the deadlines set by the relevant provisions of the denounced agreements.[107]

The foregoing considerations suggest that collective withdrawal, as practiced by African States, serves two distinct functions. Firstly, it emerges

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[105] As demonstrated in Section II, the twelve-month notice requirement provided for in Article 56 of the VCLT does not appear to have become established in international practice either. For examples, see footnote (36); for a specific focus on African practice, see: *Communique conjoint n° 001 de la République du Burkina Faso et de la République du Niger* (87); Ministry of Foreign Affairs and Cooperation of the Republic of Niger, 'Note Verbale No 000305/MAE/C/NE' (16 March 2024) partially reproduced at <https://edition.cnn.com/2024/03/16/africa/niger-ends-us-military-agreement-intl-hnk> accessed 21 January 2026; Ministères des affairse étrangères, de la cooperation régional et des Burkinabè de l'Extérieur du Burkina Faso, n. 2023 – 090 MAECRBE/CAB, 28 February 2023) partially reproduced at <www.lemonde.fr/afrique/article/2023/03/02/le-burkina-denonce-un-accord-militaire-de-1961-avec-la-france_6163866_3212.html> accessed 21 January 2026 ; *Communiqué no 029 du Gouvernement de la transition* (93).

[106] *Joint communique by Burkina Faso, the Republic of Mali and the Republic of Niger,* 28 January 2024.

[107] For details, see, *Convention tendant a eviter les doubles impositions* (France – Mali) (104) art 44 ; *Convention tendant à éliminer les doubles impositions* (France – Niger) (104) art 44.

in the African practice as an instrument for pursuing the aforementioned 'social emancipation'; by acting collectively, African States cut ties with former colonial powers, leave international organizations, and, more generally, reshape international relations.[108] Secondly, this collective approach fulfils a function with a more strictly legal dimension. By leveraging the collectiveness of their action, African States not only strengthen their political positions but also bypass the notice periods provided for in Article 56 of the VCLT or in the withdrawal clauses of the treaty.

Based on the foregoing discussion, it may be argued that, in recent practice of African States, 'collective withdrawal' has become a tool of reducing the notice periods imposed by the international law of treaties, while simultaneously promoting a more rapid reconfiguration of international relations.

V. Conclusion

The research identified the emergence of distinctive African trends regarding treaty withdrawal, in particular regarding the regional-wide application of the procedural obligations outlined in Articles 65 and 68 of the VCLT. Specifically, the article demonstrated that the duty to state reasons for withdrawal, as prescribed in Article 65, and the right to revoke the withdrawal, as enshrined in Article 68, are widely recognized in African

[108] This is particularly evident in West Africa. Indeed, by collectively withdrawing from regional treaties and organizations, the Member States of AES are attempting to redefine their international position cutting ties with Western States and establishing new relationships with Russia and China. See, Lassana Toure, Mickaël Clevenot, Abdoul Karim Diamoutene, Mahamadou Bassirou Tangara, 'The impact of the withdrawal of ESA countries (Burkina Faso,Mali,Niger) from ECOWAS on their foreign direct investment' (2024) HAL – Open Science, available at <https://hal.science/hal-04686072/document> accessed 14 April 2025.

law and practice, whilst they remain frequently contested at the international level.

An examination of the constitutions of African States revealed additional distinctive features of regional practice. Notably, the research indicates that in Africa, the power of withdrawal, when expressly regulated, is vested in the legislative bodies. This stands in contrast to the prevailing international trend, where such power typically lies with the Head of State or executive authorities. Subsequently, it has been argued that this divergence between international and African practice may reflect a specific policy choice. Indeed, entrusting withdrawal authority to national parliaments serves as a safeguard against governmental instability, thereby fostering greater continuity in African States' international legal commitments.

The motivations behind African States' practice of withdrawals have also been examined, with a specific focus on the effects of the continent's colonial past on this practice. The analysis has highlighted that African States, in their withdrawal declarations, tend to denounce violations of sovereignty or the political orientations of the institution created by the agreement. Often, the countries of the continent also complain about unequal legal relations, especially with respect to the former colonial powers, and consider such an imbalance as an expression of the remains of a legal imperialism no longer justified under current international law. Referring to this, the analysis has shown how African countries, in an effort to reinforce these arguments and eradicate the residual forms of legal imperialism, have developed additional specific practices.

This is evident not only in the above-mentioned implementation of the obligation to provide reasons—which African States use to formally and publicly denounce the remaining colonial ties—but also in the practice of 'collective withdrawal'. By acting together, African States not only give greater voice to their political positions but also seek to collectively redefine international relations in a more favorable way to their interests. Moreover, the research has also pointed out that 'collective withdrawal' is often

exercised by the African countries in violation of the notice periods outlined in Article 56 of the VCLT or in the specific withdrawal clauses of the agreement. Against this background, collective withdrawals have been interpreted as a means to reduce the notice periods prescribed by the international law of treaties and to promote the rapid social emancipation of African States.

In conclusion, the analysis has demonstrated that the practice of African States in the domain of withdrawal is characterized by a series of distinctive features that significantly diverge from the international practice. In some cases, these practices reflect a broad application of provisions of the VCLT that are otherwise frequently overlooked in global practice; in other instances, they represent innovative developments, such as the phenomenon of 'collective withdrawal'. Taken together, these findings clearly reveal that the aforementioned African practices on withdrawal consistently converge toward two primary objectives: on the one hand, they are explicitly oriented toward upholding the continuity of international obligations undertaken by African States despite their political instability; on the other, and more frequently, they serve to complete the decolonization process, asserting the full sovereignty of African States, and promoting the self-determination of the peoples and States of the continent.