Per Sevastik

The Binding Force of Treaties Under International Law

Handbook for Government Lawyers and Human Rights Advocates

IUSTUS FÖRLAG AB

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PREFACE

The purpose of this book is to show how international legal norms (basically human rights norms agreed upon in treaties) are transformed into binding rules for states and state organs. Treaties are elaborated and concluded between diplomats or other state representatives at international conferences, they are signed by Heads of Delegations, and they are in most cases ratified by states after decisions by Parliaments and/or Governments. At this point the international standard setting procedure has devolved into concrete legal obligations of States.

In a sense this book is envisaged as a simplified handbook for state officials concerned with the results of treaty-making. It shows how and when human rights norms and other internationally elaborated norms are transformed into legal realities for governments, legislators and national courts. Basically the book is written for people who work in these areas, with the purpose of showing that human rights and other international standards should be taken very seriously as soon as the government in question has accepted the binding nature of the relevant norms. Law is always developed to be implemented and it is hoped that this book could contribute somewhat to the implementation of international law in the national arena.

The project was initially conceived by the Swedish International Development Co-operation Agency (Sida) and it was later assigned to the Doctoral Programme of the Law Faculty of Uppsala University. It was put into the hands of the most experienced doctoral candidates as concerns development cooperation issues, Mr. Per Sevastik (LL.M Harvard), who is

currently on leave from Sida pursuing Ph.D. studies in international law here at the University of Uppsala.

Ove Bring
Professor of Public International Law

AUTHOR'S PREFACE

The central purpose of this handbook entitled ***The Binding Force of Treaties Under International Law*** is to describe the mechanisms of how and when states are bound by international treaties as a consequence of international law. This handbook is designed to be a comprehensive reference guide essential not only to government lawyers but also to a wider circle of officials and human rights advocates concerned with the results of treaty making. Its aim is to provide assistance to the sphere of countries that the Swedish International Development Co-operation Agency (Sida) is working with. The handbook focuses on the general trends of the international law-making process.

The Handbook examines two major areas, i.e., the law of treaties and other sources of international law (primarily custom), which together must be considered as fundamental parts providing the basic substance of the international legal regime.

A state bound by international law has to carry out its international obligations irrespective of the contents of its constitutional legislation. A state's own Constitution may indicate what measures have to be taken with regard to the implementation of its international obligations. How a state accomplishes this, is of no concern to international law. Monism and dualism are the terms used to describe the legal framework within which governments carry out their international obligations. The terms, however, are used by different authors to mean different things. The fact that the relationship of international law and municipal law has long troubled jurisprudence, and the difficulties in dealing adequately with this confused area within the confines of a hand-

book, resulted in the exclusion of this topic.

The objective of the first part, International Treaties, is to describe the binding force of treaties and the technicalities of the Vienna Convention on the Law of Treaties from a general point of view. Subsequently a separation between the *negotiating phase* and the *phase of government acceptance* is made.

In this section extracts from agreements are presented that demonstrate methods of expressing *consent*, *entry into force*, *duration*, *termination*, *territorial application*, etc., as well as various instruments used in connection with treaties, such as *full powers*, *ratification and reservation*. Every section and example is embodied under one selected and commented section of the Vienna Convention. The question of trying to explain the Vienna Convention in a simplified manner is a difficult task especially when the presentation takes the form of a handbook. Complicated subjects have therefore been considerably simplified and shortened.

The second part of the handbook describes the complex mechanisms of international law as such, and its binding quality on States. *International custom*, *the elements of custom*, *general principles of law* etc., are presented in a simplified and hopefully pedagogic form. In comparison with the first part this part only contains a theoretical view with no practical exemplifications. It is intended to fill gaps as well as to present an overall picture of the complexity of the binding force of international law.

My source of inspiration has been The Treaty Maker's Handbook edited by Hans Blix and Jirina H. Emerson in 1973. This volume is not, however, as analytical as the Treaty Maker's Handbook. The variety of the examples chosen has been limited and selected to reflect the present book's needs and objectives. Most of the examples are related to universal and regional Human Rights standards.

The completion of this Handbook would have been impossible without the advice and assistance of some people

and institutions whom I now wish to thank.

My appreciation goes to Mr. Håkan Falk, previous Head of the Section for Democracy and Human Rights at the Division for Public Administration and Management at Sida for formulating the topic of this Handbook and for encouraging me to continue my already commenced research in the area of Public International Law. Then there is Mrs Hallgerd Dyrssen, previous Head of the Division for Public Administration and Management who granted me a "sabbatical" from my position at Sida. I am indebted in general to Sida for the financial support provided in regard to the production of this handbook. Furthermore, I would also like to thank my dear friend José Canela-Catcho, Professor at the Graduate School of Public Policy at Berkeley, for reading the entire draft and giving me valuable comments. My former professor at Harvard Law School, John Mansfield, who deserves thanks for reading the entire manuscript and providing discreet though critical comments both related to the subject matter as well as the use of the English language.

I would like to thank Mr. Kohona, Chief, Office of Legal Affairs and his staff at the United Nations Treaty Section in New York, for providing me with materials for the first part of this Handbook. My week long stay in New York turned out to be very fruitful.

Thanks should also go to the Librarians at the Law Library at the University of Uppsala for their assistance in providing materials from different parts of the world.

I would also like to thank Associate Professor Iain Cameron for reading the first part of this book, for his useful comments on the subject matter and for noticing remaining shortages in the use of the English language.

Finally I want to thank Professor Ove Bring, professor of Public International Law at the Faculty of Law at the University of Uppsala for his continuous support throughout the whole process, from the beginning through to the publication of this handbook.

As always..., it goes without saying that despite all this help and support, all errors found in this book are mine.

Per Sevastik
Uppsala, September 1996.

estoppel. The principle that no one must be a judge in his own case.
I.L.C. International Law Commission.
Y.B.I.L.C. The Yearbook of the International Law Commission.
i.a. Inter alia, among other things.
i.e. Id est, that is.
infra. See below.
e.g. Exempli gratia, for example.
jus cogens. Peremptory norms of general international law.
litis pendens. The principle, that a matter is already pending before another authority.
mutatis mutandis. With due alteration of details, in comparing cases.
non-liquent. A situation when a Court is unable to deliver a judgement based on a legal principle.
pacta sunt servanda. The principle that agreements are binding and are to be implemented in good faith.
pacta tertiis nec nocent nec prosunt. The maxim expresses the fundamental principle that a treaty applies only between the parties to it.
P.C.I.J. Permanent Court of International Justice.
rebus sic stantibus. The implication of a term that the obligations of an agreement come to an end with a change of circumstances.
res judicata. The principle that an issue decided by a court should not be reopened.
supra. See above.
travaux préparatoires. Preparatory work; preliminary drafts, minutes of conferences, and the like, relating to the conclusion of a treaty.
U.N. United Nations.
v. versus.

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1 – *Introduction*

The law of treaties is in many ways fundamental to the international legal order, the basic norm of which is the principle of *pacta sunt servanda.* This specifies that agreements are binding and are to be implemented in good faith (See infra, p. 58 for a discussion of *pacta sunt servanda*).

Treaties are by far the most important written instruments used to regulate international transactions of which the simplest form between two parties are termed bilateral. There are an increasing number of multilateral treaties to which a large number of states are parties which lay down the general rules of conduct for the parties. For the time being the best vehicle for imposing binding rules on states is through the use of multilateral treaties. These are international agreements between three or more parties. Even though the conclusion of treaties has been common for centuries, more than 30,000 treaties have been registered with the United Nations since 1945 of which most are bilateral or treaties between a small number of states.

Parties to multilateral treaties may include States, international organizations or other subjects of international law possessing international personality and having capacity to enter into treaties.

What is a treaty? Who has the right to conclude a treaty? How does a treaty enter into force and how is it terminated? The answer to these and other related questions can be found in the 1969 Vienna Convention on the Law of Treaties which commonly is referred to as a "law making" treaty. It is the closest the international community comes to anything that can properly be called legislation.

The Vienna Convention, hereinafter referred to as the

Convention, came into force on 27 January 1980. Most of the provisions in the Convention attempt to codify the customary law relating to treaties, though some of the provisions are seen as representing progressive developments in customary international law. The Convention thus constitutes a useful depository of international legal rules, even for countries which are not yet parties to it.

1.1 Short Historical Overview of the Vienna Convention

The Convention that was initiated in 1949 was the product of 20 years of study by the International Law Commission, of discussions in the Sixth Committee of the United Nations, and of two sessions of the United Nations Conference on the Law of Treaties held in Vienna in 1968 and in 1969. Four appointed special rapporteurs drafted commentaries. The views of the special rapporteurs, and the reports and records of the International Law Commission are to be found in the *traveaux preparatoires* which are essential for understanding the Convention. The Convention was adopted by 79 votes to 1, with 19 abstentions.

Note: The General Assembly, in 1947, established the International Law Commission (ILC) (Article 13, 1(a) of the United Nations Charter). The Commission is created from a body of legal experts chosen to reflect the positions of the major legal systems of the world. (See also under *progressive developments*, infra, p. 99).

1.2 Treaty Definition

The Convention defines "treaty" as meaning "an international agreement concluded between States in written form governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation"(Article 2(1)(a)). The Convention uses the term treaty as a generic term and no other definition is used to describe the binding force between two

or more parties. In the broadest sense, an international convention or treaty is any agreement governed by international law.

As we see from the above treaty definition only States are mentioned as being parties to treaties. However, this does not mean that an agreement between a State and an international organization, or between two such organizations cannot constitute a treaty. In the more recent Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, concluded in Vienna on 21 March 1986, the definition of the term "treaty" is expanded to also include entities other than states as parties.

In addition to treaties one finds a spectrum of definitions. Thus, the terms *convention, protocol, declaration, covenant* and other synonymous terms are used interchangeably with treaties. In most of the International Instruments presented in this text, treaty, covenant and agreement tend to be the most frequently used terms. However, the term used is of no legal importance. Nonetheless whether an instrument is a treaty or not carries a number of significant consequences. Under international law, a treaty creates international legal obligations, with corresponding duties of compliance and remedies, including some forms of retaliatory measures in the event of breach. A treaty may also create domestic legal obligations. It is thus incorrect to refer to all international agreements as treaties, although this mistake can ocasionally be found in non-legal literature. In international relations all international agreements are referred to as "treaties".

Under domestic law, treaties may have a specialized meaning. For instance, this is the case with regard to U.S. law where only some international agreements are called "treaties", i.e., those agreements concluded by the President with the advice and consent, or approval, of 2/3 of the Senate.

In summary, the Convention stipulates that an international agreement has to entail the following criteria in order to

be "titled" treaty:

A. The treaty must be between States or between other entities than States.

B. The treaty must be in writing.

C. The treaty must be governed by international law.

Note: As we have seen, the Convention specifies that treaties must be written. However, the question of whether or not an oral agreement can have binding force is often discussed. While most international agreements are in writing, the written form is not essential to their binding character. The Convention specifies that it only applies to written agreements, but under customary international law oral agreements are not less binding although their terms may not be as easy to prove.

The leading case in international law that deals with this question in an affirmative way is the *Legal Status of Eastern Greenland* between Norway and Denmark (*"the Ihlen declaration"*), where the Permanent Court of International Justice held that an oral declaration by the Norwegian foreign minister (recorded in writing by the Danish minister) was binding. The oral declaration conceded sovereignty over parts of Greenland to Denmark. *"The Court considers it beoynd all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to the request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs"*. The oral declaration was made in the context of a Danish concession regarding Norwegian sovereignty over Spitzbergen. (P.C.I.J., ser. A/B, No. 53 (1933)

Also, in the *Nuclear Test Cases* (*Aus. v. Fr.*) 1973 I.C.J. 99 and (*N.Z. v. Fr.*) 1973 I.C.J. 135, in the midst of an international dispute over France's nuclear testing in the atmosphere in the South Pacific, the president of France declared in various public statements that France intended to stop testing.

These unilateral statements were considered as legally binding by the Court.

1.3 Treaty Components

There is no standard form regarding the contents of a treaty, however, most treaties contain four parts: the title, the preamble, the subject matter part, and the final clauses.

The *title* describes the type of treaty and the subject matter of the treaty.

The *preamble* serves as an introduction to the treaty and most often stipulates the reason for the treaty, the names of the negotiating representatives, and the authority with which the representative is equipped.

The *subject matter part* stipulates the rights and the obligations of the parties.

The *final clauses* set forth the guidelines for entry into force, termination of the treaty, revisions, accessions, reservations, publication, and languages in which the treaty will be written. The final provision concludes with the date and place of conclusion and the signatures and seals of the contracting parties.

Example: Treaty *Title* and *Preamble*

1. Example: International Covenant on Civil and Political Rights.

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human

beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals, and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

1.4 Subject Matter of a Treaty

As indicated above the subject matter area of the treaty comprises the rights and obligations of the parties. In general it can be said that the parties are entitled to conclude an agreement on whatever they like. However, two significant restrictions apply:

1. *Jus Cogens* restrictions. States may not by treaty contravene a rule of jus cogens. A peremptory norm (i.e., a rule of *jus cogens*) is a rule "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". (See p.66, infra, for a discussion of the peremptory norms of international law).

2. UN Charter limitations. A treaty may not set forth rights and obligations which conflict with those obligations a member state has undertaken under the UN Charter (Article 103).

1.5 Consent to be Bound

There are different ways for a State to express its consent to be bound by a treaty. The Convention provides expression by

signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed (Article 12).

In practice there are, however, basically two possible ways of concluding treaties, namely by solemn form or simplified form.

Concluding treaties in solemn form implies a specific procedure, and subject to ratification by the highest competent authority.

Concluding treaties in simplified form implies that ratification is rarely needed. One party sends a note or a letter including the commented draft of an agreement and the other party replies by returning a note or letter expressing its intention to accept/adopt the text as an agreement. The simplified form of concluding treaties is most often used when extending or amending already existing agreements.

Note: As will be seen the Convention itself does not necessarily require ratification for a state to be bound by a treaty, and in many informal international agreements it is sufficient to just sign the treaty which then, by itself, binds the parties to the treaty.

2 – *The Negotiation Phase*

2.1 Treaty-Making Competence

The parties to a treaty, either a state or an international organization, and their representative must have treaty-making competence in order to be able to negotiate and conclude an international agreement. Most Heads of Delegations will at the end of the diplomatic negotiations receive a government authorization to bind their State by signing the treaty.

2.2 Full Powers

The authority of state representatives or persons representing an international organization to negotiate treaties is presented in a document entitled a "full powers" document, which names those individuals who are authorized to negotiate and conclude a treaty on behalf of the State. The term "full powers" is defined in the Convention as "a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of a State to be bound by a treaty, or for accomplishing any other act with respect to a treaty"(Article 2(1)(c)).

Example: Model Expressing Full Powers

I, (name and title of minister for foreign affairs, head of Government or head of State), **HEREBY AUTHORIZE** (name and title) to (sign, ratify, denounce, effect the following declaration in respect of, etc.) on behalf of the Government of (name of state).

Done at (place) on (date)

(Signature)

2.3 The Negotiators

A state representative may negotiate a treaty on behalf of a state if he (a) possesses full powers, or (b) if, from the practice of the states concerned or from other circumstances, it can be deduced that he enjoys full powers, (Article 7). Heads of States, Heads of Governments and Ministers for Foreign Affairs are considered to possess "full powers" for the purpose of performing all acts relating to the conclusion of a treaty. An act relating to the conclusion of a treaty performed by a person who cannot be considered to enjoy "full powers" and thereby authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

2.4 Apparent Authority of a State's Representative

If it is evident that a state representative has exceeded his authority then the State in question will not be bound by that treaty.

2.5 Subsequent Confirmation

When there is no full powers authority, the treaty is without legal effect unless the State subsequently confirms the treaty. Usually such confirmation must be explicit but it can be sufficient that it is implied by later action (Article 8).

2.6 The Negotiators' Adoption and Confirmation of the Text of a Treaty

There is no definition of "adoption" in the Convention but it is generally defined as the formal act signifying that the form and content of the treaty have been agreed upon, i.e., that negotiations have been completed, issues of disagreement have been resolved, and that the wording of the final treaty text has been agreed upon. At this stage the treaty may be initialed by the negotiating parties.

A treaty text may be adopted through the consent of all states participating in the drafting or through a majority vote

by two-thirds of the states present and voting, unless by the same majority they decide on a different rule. The same procedures should be adopted for declaring the text authentic and definitive which are part of the negotiations (Articles 9 and 10).

3 – *The Phase of Government Acceptance*

3.1 Expression of Consent to be Bound after the Negotiation Phase

There are different ways of expressing a state's consent to be bound by a treaty. This depends on the importance or the character of the treaty, whether a specific condition or conditions are required by the "final clause" of the treaty and sometimes on the choice of the government concerned. Thus depending on the circumstances, a state may indicate its consent to be bound by a treaty in different ways, as suggested in Articles 7-11, e.g., by signature (should be distinguished from initialling but may have the same effect if the states so agree) exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by "any other means if so agreed" (Article 11).

3.2 Signature

The signature of a state representative may be sufficient to bind parties:

1. when the treaty itself provides that signature is an indication of definite consent,

2. it is otherwise established that the negotiating states wanted this,

3. or that the state intended that its representative's signature should bind the state and that this intent appears from the "full powers" document or was expressed during the negotiation (Article 12).

If a signature by itself binds the party to a treaty, ratification

of the treaty is superfluous. In contrast, if a treaty requires an additional step of ratification (signature *ad referendum, i.e., signature subject to later ratification*), then signature is regarded as a method of authenticating the treaty's text and does not indicate a promise to ratify later.

A party who has signed a treaty but not yet ratified may under the following circumstances still be obliged not to defeat the object and purpose of the treaty (Article 18):

i. if a party has signed a treaty or has exchanged instruments manifesting that the treaty is subject to ratification, acceptance or approval, that party is required not to defeat the object of the treaty until it clearly expresses its intention to no longer be a party to the treaty.

ii. if a party has expressed its consent to be bound by the treaty subject to the entry into force of the treaty and the entry into force is not unduly delayed, that party is required not to defeat the object of the treaty.

Note: The situation where a treaty itself provides that signature is an indication of definite consent is hardly ever found in multilateral treaties. However, it is common in the case of many types of bilateral treaties.

Examples: Expressing Signature – Bilateral Treaties

1. Example: Agreement between the Imperial Ethiopian Government and the Royal Swedish Government for technical assistance in the field of vocational and technological education (1954)[1]

Article X

This Agreement shall enter into effect as from the date of

[1] See Sveriges överenskommelser med främmande makter 1954, Stockholm 1956.

signature, and shall remain in effect until 30th June, 1955, subject to the provisions of Artcles XI, XII and XIII.

2. Example: Development Co-operation Agreement Between The Government of Sweden and The Government of the Republic of South Africa, 1 July 1995 – 31 December 1996

Article 8

ENTRY INTO FORCE AND TERMINATION

This Agreement shall enter into force on the date of signature and remain valid until 31 December 1996. If no new agreement on development co-operation is concluded for the period after that date, the remaining funds may be utilised to fulfil the undertakings made by Sweden in Specific Agreements which are still valid in accordance with the stipulations of each Specific Agreement.

This Agreement may be terminated by six months written notice by either Party. In the case of termination by Sweden, the termination shall not apply to funds irrevocably committed in good faith by South Africa to third parties before the date of the notice of termination, provided that the commitments were made in accordance with Specific Agreements in force at the date the commitments were made. In cases of termination by South Africa no funds shall be available for activities after the notification of termination of the Agreement.

Done in Cape Town on this day of February 1995, in two originals in the English Language.

For the Government of Sweden	For the Government of the Republic of South Africa
Ingvar Carlsson Prime Minister	Nelson Mandela President

3.3 Ratification

A treaty may indicate that it shall become binding upon ratification (Article 14(1)). In international law ratification provides an opportunity for the signatory state, through its Head of State, foreign minister, or duly authorized diplomatic agent to declare that it considers itself bound by the treaty. The declaration is usually contained in so-called instruments of ratification which are either exchanged between the contracting parties or deposited with a previously designated depository organization or government.

Note: In some countries, the constitution might require the Head of State to obtain the approval of the legislature, before ratifying a treaty.

Examples: Expressing Ratification

1. Example: Instrument of Ratification

Instrument of ratification

I, (name) (title (Head of State or Government, or Minister for Foreign Affairs) declare that the Government of (name of State) having previously signed (treaty/convention) now declare that the Government of (name of state) hereby ratifies the same and undertakes to perform and carry out faithfully all the stipulations therein contained. In witness whereof, I sign the present instrument.

Done at (place) on (date)

Signature

Given at (place) on (date)

Signed

(Head of State or Government, or Minister for foreign Affairs)

2. Examples: Treaties Expressing Ratification

2.1 Example: Rights to Organize and Collective Bargaining Convention (1949)

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

2.2 Example : Forced Labour Convention (1930)

Article 28

1.This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.

2.3 Example: Discrimination (Employment and Occupation) Convention (1958)

Article 7

The formal ratification of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8.

1.This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

3.4 Signature Followed by Ratification

Treaties tend to provide for signature followed by ratification in order to make it possible to check on the treaty-making powers of the executive branch by passing the treaty to the national authority, usually the legislature, that is empowered under domestic law to approve that state's adherence to international agreements. This gives the contracting State a final opportunity to study the treaty carefully, before consenting to be bound by it.

3.5 The Period Between Signing and Ratification

If a party has not yet ratified a treaty, it may under the following circumstances still have an obligation to not defeat the object and purpose of a treaty prior to its entry into force (Article 18).

Intention to no longer be a party to a treaty: When a treaty is signed by a party or the exchanged instruments indicate that the treaty is subject to ratification, acceptance or approval, that party is obliged to not defeat the object of the treaty until it clearly expresses its intention to no longer be a party.

3.6 Acceptance

Article 14(2) of the Conventions refers to *acceptance* as an expression of consent to be bound "under conditions similar to those which apply to ratification". Acceptance should be seen as a new procedure which has become established in treaty practice during the last twenty years. However, it would probably be more correct to say that *acceptance* should be seen as an established name given to two new procedures, one analogous to ratification and the other to accession.

Note: If a treaty provides that it shall be open to signature "subject to acceptance" it is equivalent to "signature subject to ratification". Similarly, if a treaty is open to acceptance without prior signature it is equivalent to accession.

"*Acceptance was originally devised to provide a new procedure outside the traditional procedures of accession and ratification in order to facilitate entry into treaty obligations without the delays involved in complying with internal constitutional requirements; and it is now found with sufficient frequency in treaty practice to justify and even call for specific mention*" (See Y.B.I.L.C., 1962, vol. II, pp. 59–60).

Example: Article on Acceptance

1. Example: Convention against Discrimination in Education 1960

Article 12

1.This Convention shall be subject to (ratification) or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

3.7 Approval

Approval seems to appear more often in the form "signature subject to approval" than in the form of a treaty which is made open for "approval" without signature. But it appears in both forms. Approval was introduced in treaty-making practice, to correspond to some countries' constitutional procedures or practices of approving treaties.

Acceptance and approval perform the same function as ratification and accession on the international plane.

The similarity between ratification and acceptance and approval is recognized in Article 14(2) of the Vienna Convention by providing that "the consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification".

Example: Model of an Instrument of (Ratification) Acceptance or Approval

WHEREAS the (title of treaty, convention, agreement, etc.) was (concluded, adopted, opened for signature, etc.) at (place) on (date),

AND WHEREAS the said (treaty, convention, agreement, etc.) has been signed on behalf of the Government of (name of State) on (date),

NOW THEREFORE I, (name and title of the head of State, head of Government or minister for foreign affairs), declare that the Government of (name of State), having considered the above mentioned (treaty, convention, agreement, etc.), ratifies (accepts, approves) the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of (ratification, acceptance, approval) at (place) on (date). (Signature)

3.8 Accession

A State which has not taken part in the negotiations that produced the treaty, but was invited by the negotiating States to accede to the treaty, can become party to a treaty by accession (Article 15). However, accession is possible, only if it is provided for in the treaty or all the contracting States have agreed that the acceding State should be allowed to accede. (The term *adhesion* or *adherence* can also be found in treaty-terminology).

Examples: Expressing Accession

1. Example: Model of an Instrument of Accession

WHEREAS the (title of treaty, convention, agreement, etc.) Was concluded (adopted, opened for signature, etc.) At (place) on (date),

NOW THEREFORE I, (name and title of the head of State, head of Government or minister for foreign affairs), declare that the Government of (name of State), having considered the above mentioned (treaty, convention, agreement, etc.), accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at (place) on (date). (Signature)

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2. Example: Article Expressing Accession

Protocol relating to the Status of Refugees (1967)

Article V. – Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and any other State

Member of the United Nations or member of any of the Specialized Agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

3. Example: Instrument of Accession: Republic of X-Land

EMBLEM OF X LAND

INSTRUMENT OF ACCESSION TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

16 December 1966

WHEREAS the International Covenant on Civil and Political Rights was adopted, opened for signature, ratification and accession by General Assembly Resolution 2200 A(XXI) of;

AND WHEREAS Article 48 of the present Covenant provides that any State Member of the United Nations, inter alia, may become a party to the present Covenant and that the present Covenant shall be open to accession by any State member of the United Nations, inter alia, and further that accession shall be effected by the deposit of an instrument of accession with the Secretary – General of the United Nations;

NOW THEREFORE the Government of **X-LAND**, having considered and approved the present Covenant, do hereby formally accede to it.

IN WITNESS of which I, MR. Minister from **X-LAND**, Member of Parliament and Minister of Foreign Affairs of the Republic of **X-LAND**, have signed and sealed this Instrument of Accession to the present Covenant.

DONE at the capital of **X-LAND** this 3rd day of November in the year.....

Signature

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4. Example: Alternative Methods Expressing Consent to be Bound

4.1 Example Triple option clauses, signature/ratification/ accession – and other forms

4.2 Example: International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of December 1966.

Art 26, 1. The present Covenant is open for signature by any State member of the United Nations or member of any of its specialized agencies, by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United nations.

3. The present Covenant shall be open to accession by any state referred to in paragraph 1 of this article.

4. **Accession** shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

Art 27, 1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after date of the deposit of its own instrument of ratification or instrument of accession.

4.3 Example: International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article XIII

The present Convention is open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it.

Article XIV

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

4.4 Example: International Convention against Apartheid in Sports (1977)

Article 16

1.The present Convention shall be open for signature at United Nations Headquarters by all States until its entry into force.
2.The present Convention shall be subject to ratification, acceptance or approval by the signatory States.

Article 17

The present Convention shall be open for accession by all States.

4.5 Example: Convention on the Political Rights of Women (1952)

Article IV

1.This Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of

any other State to which an invitation has been addressed by the General Assembly.
2. This Convention shall be ratified...

Article V
1. This Convention shall be open for accession to all States referred to in paragraph 1 of article IV.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations

4.6 Example: Protocol amending the Slavery Convention signed at Geneva on 25 September 1926

Article II
1. This present Protocol shall be open for signature or acceptance by any of the State Parties to the Convention to which the Secretary-General has communicated for this purpose a copy of the Protocol.
2. States may become Parties to the present Protocol by:
(a) Signature without reservation
(b) Signature with reservation as to acceptance, followed by acceptance;
(c) Acceptance
3. Acceptance shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

4.7 Example: Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1975)

Article 25
1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments

of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

4.8 Example: International Convention on the Protection of the Rights of All Migrant workers and members of Their Families (1990)

Article 86

1.The present Convention shall be open for signature by all States. It is subject to ratification.

2.The present Convention shall be open to accession by any State.

3.Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

4.9 Example: Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, Approved by General Assembly resolution 317 (IV) of 2 December 1949

Article 23

The present Convention shall be open for signature on behalf of any Member of the United nations and also on behalf of any other State to which an invitation has been addressed by the Economic and Social Council. The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The States mentioned in the first paragraph which have not signed the Convention may accede to it.

Accession shall be affected by deposit of an instrument of accession with the Secretary-General of the United Nations.

For the purposes of the present Convention.....

4 – *Entry into Force*

Entry into force is the pragmatic implementation of the treaty's terms. The manner in which and the date on which the treaty enters into force is determined in the treaty. Normally a treaty enters into force as soon as all the negotiating states have expressed their consent to be bound by it (Article 24(2)).

4.1 Provisional Application

However, the negotiating states have the right to depart from this general principle by inserting an appropriate provision in the treaty itself, i.e., *provisional application* (Article 25).

The reason for delaying the entry into force of the treaty might be to give the parties appropriate time to adapt themselves to the requirements of the treaty and give the parties time to make necessary changes in their national laws.

A treaty may provide for its entry into force on a fixed date, or a specified number of days or months after the last ratification. For instance, the 1982 Law of the Sea Convention, Article 308, states that "This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession". In the drafting procedure, involving very many states, it may seem unreasonable to apply the normal rule – Article 24(1) indicating that the treaty will not enter into force until all the negotiating states have ratified it.

Examples: Treaty Provisions Expressing Entry Into Force

1. Example: International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A(XXI) of 16 December 1966.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

2. Example: Convention (No.29) Concerning Forced Labor, Adoption on 28 June 1930 by the General Conference of the International Labour Organization at its fourteenth session.

Article 28

1. This Convention shall be binding only upon those Members whose ratification have been registered with the International Labor Office.
2. It shall come into force twelve months after the date on which ratification of two members of International Labor Organization have been registered with the Director-General.

3. Example: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949).

Article 57

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Con-

tracting Party six months after the deposit of the instrument of ratification.

4. Example: Geneva Convention relative to the Treatment of Prisoners of War (1949).

Article 138

The present Convention shall come into force six months after not than less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

5. Example: Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Article 95

1.This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2.For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six moths after the deposit by such Party of its instrument of ratification or accession.

5 – Reservations

States frequently, for various reasons, make reservations in regard to one or more of the treaty's provisions before becoming a party to the treaty. The Convention defines reservation as an "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state" (Article 2 (1)(d)).

In a bilateral setting a rejection of a proposed provision in a treaty constitutes the refusal of an offer made and requires a renegotiation of the proposed terms. Thus, reservations only apply in respect to multilateral treaties. If a reservation is made it can create some problems, because some states may accept the reservation and others may reject it.

5.1 The Purpose of Reservations

The purpose of allowing reservations to multilateral treaties is to encourage the broadest possible participation by permitting states to become parties without having to agree to every provision of a treaty.

5.2 Declaration of Understanding

This is a statement in which a State declares that it understands a given provision in the treaty in a specific way. Such a declaration may be a mere clarification of the State's position or it may amount to a reservation, depending on whether it does or does not vary or exclude the application of the terms of the treaty as adopted (Y.B.I.L.C., 1966, vol. II pp. 189–90).

5.3 Permissible Reservations

The general rule indicates that States are free to adhere to a treaty with reservations. There are three exceptions to this rule (Article 19):

1. if the treaty explicitly prohibits reservations,

2. if the treaty only permits certain types of reservations and the one being made is of a different type or, in general,

3. if the reservation is incompatible with the object and purpose of the treaty.

Note: Traditionally it was maintained that reservations had to be unanimously agreed upon by all the contracting parties to the treaty, and if that was not the case the reservation was null and void. However, partly because of the expansion of the international community the old unanimity doctrine became unrealistic and thus was partly abandoned.

In particular, the unanimity doctrine was undermined by the advisory opinion of the International Court of Justice in the *Genocide Case* (ICJ Reports, 1951, p.15) where the Court came to the conclusion that the traditional theory – *the unanimity theory* – was of undisputed value but that it was not applicable to certain types of treaties: "*a State which has made ....a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention...*"

5.4 Acceptance and Legal Effects of Reservations

When a State makes a reservation it attempts to join the treaty with a proposal to modify the terms of the treaty as between itself and the other parties to the agreement. When

several States make reservations to a treaty, the multilateral treaty can then be seen as having been transformed into a series of related bilateral treaties.

A reservation expressly permitted by the treaty does not require any subsequent acceptance by the other States unless the treaty so provides (Article 20(1)).

Some multilateral treaties, because of their specific character and the limited number of states that negotiated them, may indicate that a reservation requires acceptance by all the parties (Article 20(2)).

If the treaty does not indicate any provisions related to reservations, then all the contracting States may decide whether to reject or accept a reservation on its own merits.

If a State accepts a reservation, then the treaty will enter into force between the accepting State and the State that has made the reservation. The treaty's provisions apply as modified by the reservation (Article 21(1)). The reservation does not modify the provisions of the treaty for the other parties to the treaty (Article 21(2)).

5.5 Objections to Reservations

There are two possible outcomes if a state objects to a reservation:

a. The objecting State is still willing to be a party

In that case the treaty is in force between the objecting and accepting state, "the provision to which the reservation relates do not apply as between the two States to the extent of the reservation" (Article 21(3)).

b. The objecting State refuses to be a party

If the objecting State both objects and at the same time expresses its intention that the whole treaty shall have no effect as between it and the reserving State, the reserving state and objecting state are not parties to the treaty in relation to each other.

Example illustrating the above reservations

Four Sovereign states *Utopia*, *Despotia*, *Terrorista*, and *Catastrophia* are all parties to a multilateral treaty with the imaginary name of the Ultimate Peace Treaty, but *Utopia* ratifies the treaty with a reservation in regard to Article 2. *Despotia* accepts the reservation; *Terrorista* objects but still wishes to maintain the treaty relationship; and *Catastrophia* objects both to the reservation made and to entry into force of the treaty between itself and *Utopia*. The results are as follows:

1. The treaty is in force between Utopia and Despotia but article 2 is modified by the reservation.

2. The treaty is in force between Utopia and Terrorista, but article 2 does not apply between the two states to the extent of the reservation.

3. The treaty is not in force between Utopia and Catastrophia.

4. The treaty is in force and unmodified between, Despotia, Terroristia and Catastrophia.

If, however, a state does not indicate its dissenting opinion with regard to a reservation within a period of (i) 12 months after it was notified of the reservation or (ii) 12 months after having expressed its consent to be bound by the treaty depending on which event occurs later that state will be considered to have expressed its consent to be bound by the treaty (Article 20(5)).

5.6 Legal Effects of Reservations and Objections to Reservations

The overall effect in practice of a reservation is that a multilateral agreement becomes segmented into different agree-

ments. The contracting states will be parties to the same agreement, but in effect one part of the original agreement will exist between some contracting parties while another part will exist between other parties and so on. It can be said that several separate agreements may evolve. The purpose of the rather complicated reservation system is to convince as many states as possible to agree to a multilateral treaty while at the same time recognizing that states may have their own valid reasons for not being bound to the entire extent of a treaty's provisions (Article 21).

Note: A treaty may establish an indipendent supervisory body competent to take a binding decision as to the validity of a reservation.

Examples: Articles on Methods Expressing Reservations and Declarations

1. Example: Convention on the Rights of the Child (1989)[2]

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

[2] All extracts related to reservations have been assembled from *Multilateral Treaties Deposited With the Secretary-General*, Status as at 31 December 1993, ST/LEG/SER.E/12.

2. Examples: Declarations and Reservations Made

2.1 Argentina

Reservation:
The Argentine Republic enters a reservation to subparagraph (b), (c), (d) and (e) of article 21 of the Convention on the Rights of the Child and declares that those subparagraphs shall not apply in areas within its jurisdiction because, in its view, before they can be applied a strict mechanism must exist for the legal protection of children in matters of inter-country adoption, in order to prevent trafficking in and sale of children.

Declarations:
Concerning article 1 of the Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of eighteen.

Concerning article 38 of the Convention, the Argentine Republic declares that it would have liked the Convention categorically to prohibit the use of children in armed conflicts, such a prohibition exists in its domestic law which, by virtue of article 41 of the Convention, it shall continue to apply in this regard.

Upon ratification:

Declaration:
Concerning subparagraph (f) of article 24 of the Convention, the Argentine Republic considers that questions relating to family planning are the exclusive concern of parents in accordance with ethical and moral principles and understands it to be a State obligation, under the article, to adopt measures providing guidance for parents and education for responsible parenthood.

2.2 Bosnia and Herzegovina:

"The Republic of Bosnia and Herzegovina reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Bosnia and Herzegovina provides for the right of competent authorities (guardianship authorities) to determine on separation of a child from his/her parents without a previous judicial review".

3. Example: Official Letter Concerning Reservations

27 April 1992

Sir,

I have the honour to refer to your letter No. 458/2535 dated 17 March 1992, transmitting the instrument of accession by the Government of Thailand to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989.

The instrument was deposited with the Secretary-General on 27 March 1992, the date of its receipt.

Due note has been taken of the reservation contained in the said instrument.

In accordance with its article 49 (2), the Convention entered into force for Thailand on the thirtieth day after the date of the deposit of the instrument, i.e., on 26 April 1992.

All States concerned are being informed accordingly.

Accept, Sir, the assurance of my highest consideration.

Carl-August Fleischauer

The Legal Council

His Excellency Mr. Nitya Pibulsonggram Ambassador Extraordinary and Plenipotentiary Permanent Representative of Thailand To the United Nations New York, N.Y.

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4. Example: Reservations and Declarations

4.1 Example: Protocol relating to the Status of Refugees (1967)

Article VII. Reservations and declarations
1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

5. Example: Actual Declarations and Reservations Made

5.1 Botswana:
"Subject to the reservations in respect of article IV of the said Protocol and in respect of the application in accordance with article I thereof of the provisions of articles 7, 17, 26, 31, 32 and 34 and paragraph 1 of article 12 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951".

5.2 Ethiopia:
Subject to the following reservation in respect of the appli-

cation, under article I of the Protocol, of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951:

"The provisions of articles 8, 9, 17(2) and 22(1) of the Convention are recognized only as recommendations and not as legally binding obligations".

6. Example: Convention against Discrimination in Education

Article 9 Reservations to this Convention shall not be permitted

7. Example: Protocol relating to the Status of refugees

Article VII

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a

notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and article 44, paragraph 3, of the Convention shall be deemed to apply *mutis mutandis* to the present Protocol.

7.1 Example: Actual Declarations and Reservations Made

Netherlands
"In accordance with article VII of the Protocol, all reservations made by the Kingdom of the Netherlands upon signature and ratification of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951, are regarded to apply to the obligations resulting from the Protocol".

6 – *Depositaries*

In previous practice, when parties had ratified a multilateral treaty the relevant instruments were "exchanged" between the parties as is the case with bilateral treaties. The practice of designating a "depositary" was, however, introduced to facilitate the growing complexity of these procedures.

Thus, after a treaty is concluded, the written instruments which provide formal evidence of consent to be bound by ratification, accession, and so on, and also reservations and other declarations, are placed in the custody of a depositary, who may be one or more States, or an international organization.

The function of the depositary is among other things to verify the acceptability of signatures and instruments and of related reservations and declarations made, and to keep the parties informed through depositary notifications and notifications of the entry into force of the treaties. The UN Secretary General acts as depositary for many treaties concluded under the auspices of the UN. The number of multilateral treaties deposited with the Secretary-General as of February 1996 amounted to 473.

6.1 Deposition – Binding Force

Once deposited with the Secretary-General the different instruments accordingly bind the states concerned. The submitting state is then included among the parties or its treaty action is duly recorded. However, the Secretary-General must first ascertain that the treaty is open to participation by the state concerned.

Example: Expressing Depositary Notification

1. Example of depositary notification pursuant to the signature of a treaty (with reservations and declarations)

C.N. 94.1994. TREATIES-(Depositary Notification) CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 10 DECEMBER 1984

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following: On 14 March 1994, the instrument of accession by the Government of Ethiopia to the above-mentioned Convention was deposited with the Secretary-General.

In accordance with its article 27(2), the Convention entered into force for Ethiopia on the thirtieth day after the date of deposit of the instrument, i.e. on 13 April 1994.

6 June 1994

Signature:

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned.

7 – Registration

Article 102 of the United Nations Charter provides that every treaty entered into by any member state of the United Nations shall be transmitted to the Secretariat for registration and publication. However, non-member states are not covered by Article 102 but through Article 80 of the Vienna Convention they are urged to voluntarily transmit treaties that have entered into force to the Secretariat, for "filing and recording".

Note: Article 102 was intended to discourage states from entering into secret agreements without the knowledge of their nationals or the knowledge of other states whose interest might be affected by such agreements.

Examples: Articles Expressing Procedures on Registration

1. Example: Convention (No. 105) Concerning the Abolition of Forced Labour, Adopted on 25 June 1957 by the General Conference of the International Labour Organization at its fortieth session.

Article 7
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

2. Example: Convention on the Reduction of Statelessness

Article 21

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.....

8 – *Observance and Application of Treaties*

All parties to a treaty must perform their obligations under the treaty in good faith.

8.1 Pacta Sunt Servanda

As noted in the introduction, this is one of the most fundamental principles of the law of treaties (and law in general), and is expressed in Article 26 which states that treaty obligations between states are binding in good faith. In general treaties do not have retroactive effect and if they are to have such effect this has to be expressly indicated in the treaty (Article 28). Unless a different intention appears from the treaty or is otherwise established, a treaty applies to all the territory of a contracting party (Article 29).

8.2 Good Faith Performance

This is required, as far as international law is concerned, irrespective of any conflicting domestic law. A State may not invoke the fact that its consent to be bound by a treaty was expressed in violation of the state's domestic law (Article 46). (See infra, p. 64 section 10.2). This too is an undisputed and fundamental principle of international law.

8.3 Territorial Scope of Treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its whole territory, (Article 29). "All territory" is defined as all land, neighbouring territorial waters and air space.

8.4 Treaty Interpretation

States or international organizations which are parties to a treaty are the ones normally interpreting the treaty. The treaty signed by the parties will in most cases indicate the manner in which disputes shall be resolved. Thus, other entities beside the parties may also interpret the treaty.

There are basically three methods of interpretation:

1) *Textual approach*

Most authorities advocate the textual approach, including the ICJ. The method focuses only on the text of the treaty and the "plain and natural meanings of words". Supporters of this method are not trying to ascertain the intention of the parties, except to the extent that the intent is clearly expressed in the words of the text. The presumption is that the text itself contains all that the parties wish to say.

2) *Limited contextual approach*

As expressed in the Convention (Articles 31 and 32) regards the text as the starting point for interpretation. However, interpretation is not necessarily limited to the text itself but may be extended to incorporate the traveaux preparatoires of the treaty as a "supplementary means of interpretation" (Article 32).

3) *Policy-oriented and configurative approach*

This is the most flexible and liberal of the three methods. Intent is defined as the "genuine shared expectations" and may be based on the treaty text and all pre and post-treaty communications (Mc Dougal, Lasswell and Miller., *The Interpretation of Agreements and World Public Order, Principles of Content and Procedure* (New Haven 1967).

8.5 Third States

A third state is defined in the Convention as a "... State not party to the treaty" (Article 2(1)(h)). The general rule is that

a treaty applies only between the parties (*pacta tertiis nec nocent nec prosunt*) and does not create any obligations for states that are not parties to the treaty without their consent (Article 34). The exceptions to this general rule are stipulated in Articles 35-37 of the Convention. This does not preclude a provision contained in a treaty from becoming law for a non-party when the provision has become a rule of customary international law, (Article 38 of the Statute of the International Court of Justice). Thus, the third party is bound not by the treaty, but by customary international law. (See also p. 54 supra, under Introduction). The ICJ has noted that this would occur when one of the following conditions existed:

1. Where the Treaty rule is declaratory of pre-existing custom

2. Where the treaty rule is found to have crystallized customary law in process of formation

3. Where the treaty rule is found to have generated new customary law subsequent to its adoption.

Note: The leading ICJ case that articulated these conditions is the 1969 Judgment in the North Sea Continental Shelf Cases. The conditions were also affirmed in the 1986 Judgment of the ICJ in the Nicaragua Case.

9 – *Amendments of treaties*

The general rule regarding the amendment of treaties is that "a treaty may be amended by agreement between parties" (Article 39). The manner of amending a treaty is often specified in the treaty. The Convention points out two methods i.e., *amendments* and *modifications*.

9.1 Amendment

Of the two methods, amendment is more formal and involves in principle all the parties to the treaty in as much as it requires notification about the amendment to all the contracting states (Article 40). The treaty stipulates the method of amending and all parties have the right to join the amendment procedures. If an amendment is made, and a number of the parties by doing so subsequently become bound by the amended version, these parties will nevertheless under the original treaty have obligations with regard to those parties not joining the amended version.

9.2 Modification

Modification, in contrast to amendment, is an arrangement between only some of the parties. A party to the original treaty that fails to become a party to the modified agreement, is not, of course, bound by the modified agreement (Article 41). The following criteria have to be met:

1. the possibility of modification has to be recognized by the treaty;

2. that modification is not prohibited by the treaty and does not affect the rights of other parties, and does not relate to "a

provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole" (Article 41(1) (ii)).

Examples: Articles Expressing Amendments of Treaties

1. Example: International Convenant on Civil and Political Rights (1966).

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States parties present and voting at the conference shall be submitted to the General Assembly of the United nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52
Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Note: Since amendment is a long and complicated procedure the parties to the Convenant have chosen to adopt an additional optional protocol rather than amend.

2. Example: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims of international armed conflicts

Article 97
1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depository, which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.
2. The depository shall invite to that conference all the High Contracting Parties as well as the Parties to the Convention, whether or not they are signatories of this Protocol.

10 – Validity of Treaties

The Convention does not set up conditions for the validity of treaties. Instead it stipulates five exhaustive rules on which the validity of an agreement may be challenged. No other rules of invalidity are permitted. The six stipulated rules are: *non-compliance with domestic law, error, fraud* and *corruption, coercion* and *Jus cogens.*

10.1 Conflict with Domestic law

A State may try to avoid performing its obligations under a treaty claiming that their consent to be bound by the treaty is invalid because it was effected in a manner that violated applicable domestic law. This argument will fail unless that violation was manifest and concerned a rule of its internal law of fundamental importance (Article 46 (1)). A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and good faith (Article 46 (2)).

10.2 Error

Error may only be invoked by a State if "the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty" (Article 48).

Note: Error has been invoked almost exclusively in respect of boundary issues concerning geographical errors, mostly errors in maps. Error, or mistake is of rather limited significance in the law of treaties in international law and is rarely

invoked as a ground for invalidation but plays a more significant role in the law of contracts in municipal law.

If a party to a treaty has contributed through wrongful behaviour to the error, or should have known of a possible error, the error itself is not reason enough for invalidating the treaty.

Correction of errors

Corrections shall be made through the use of a procedure which can be seen as both smooth and informal (Article 79).

10.3 Fraud

The Convention provides that a treaty may be invalidated "if a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State...."(Article 49).

10.4 Corruption

Furthermore the Convention provides that a treaty may be invalidated if a State's consent to "be bound by a treaty has been produced through the corruption of its representative directly or indirectly by another negotiating State"(Article 50). However, like error, fraud and corruption are of little importance in practice in the law of treaties.

Note: Neither of the key terms, "fraudulent conduct" or "corruption" are defined in the Convention or by international jurisprudence.

10.5 Coercion *(Threat)*

The Convention provides that a treaty will be of no legal effect if a State's consent to be bound by the treaty "has been produced by the coercion of its representative through acts or threats directed against him...."(Article 51). Furthermore the Convention provides that a treaty is void "if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of

the United Nations" (Article 52). Article 52 refers to Article 2(4) of the Charter of the United Nations, which prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations".

Note: Any other form of threat does not challenge the validity of the treaty.

10.6 Conflict with Peremptory Norms (*Jus Cogens*)

The Convention provides that a treaty is void, "if, at the time of its conclusion, it conflicts with a peremptory norm of general international law" (Article 53). A peremptory norm is defined, for the purpose of the Convention, as a norm "accepted and recognized by the international community of States as a whole" from which "no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". Should a new peremptory norm of general international law develop any existing treaty which conflicts with that norm will be void (Article 64).

There are not many rules which are generally accepted as peremptory rules. Rules that seem to have achieved a general consensus as being *jus cogens* are the basic principles of *pacta sunt servanda* and the prohibition on the use of or threat of force. The Convention indicates that there are certain rules of international law which are of superior status and which, as such, cannot be affected by treaties, but does not enumerate specific examples. Other rules that might be characterized as *jus cogens* are rules prohibiting genocide, slavery.

Note: When the International Law Commission was engaged in preparing for the Convention considerable discussion took place regarding the issue of whether there were certain rules in international law so fundamental and of such universal importance that a State would not be entitled to derogate

from them even by agreement in a treaty with another State. The Commission came to the conclusion that such rules did exist. Thus, as we have seen, Article 53 of the Convention applies this conclusion to the question of treaty validity.

10.7 Invalidity of Treaties

Under Article 42, the validity of a treaty and a State's consent to it, is to be determined only according to the Convention, while the treaty's continuance in force may be determined either under the Convention or by provisions of the treaty itself.

Note: However, it would logically be impossible for the validity of a treaty to be determined under that treaty itself, since the treaty could have no effect, with regard to that question or any other, until its validity had been otherwise established.

10.8 Consequences of Invalidity

A treaty which under the provisions set forth in the Convention is determined to be invalid, is void and has no legal force. However a state that is no longer bound by a treaty because of invalidity does not escape an obligation to which it is subject under international law independently of the treaty (Article 43).

10.9 Acquiescence

If there are grounds for invalidating a treaty and a party despite its knowledge of the existence of this circumstance continues to perform under the terms of a treaty, that party is precluded from later invoking those grounds for invalidation (Article 45).

Note: This provision does not apply to treaties invalid by virtue of Articles 51, 52 and 53.

11 – Termination of a Treaty

Most modern treaties contain provisions for termination or withdrawal. In some cases it is provided that the treaty shall expire automatically after a period of time or when a particular event occurs, while other treaties give each of the contracting parties an option to withdraw, usually after giving a certain period of notice.

11.1 Termination or Withdrawal
A treaty may be terminated as provided for by the provisions of the treaty, or by the consent of the parties. Material breach by one of the parties may also be reason enough to terminate or suspend a treaty, as may a supervening impossibility or a substantial change in circumstances (Article 54).

11.2 Suspension
A multilateral treaty may be temporarily suspended between some of the contracting parties alone, if:

1. the treaty provides for such suspension,

2. the treaty does not prohibit the suspension in question and does not affect or harm the rights of the other parties to the treaty and is not incompatible with the object and purpose of the treaty (Article 58).

11.3 Termination by Treaty Provision or Consent
As indicated, most contemporary treaties contain provisions regarding the termination of a treaty or the withdrawal of a party to a treaty. Thus, Article 54 of the Convention provides that this may be done either in conformity with the provi-

sions of the treaty or at any time by consent of all the parties to the treaty. It is common today for a treaty either to be for a fixed term or to provide that a party may withdraw after giving a certain period of notice. If all parties to a treaty conclude a later treaty relating to the same subject-matter the original treaty will be considered terminated. This also applies where it appears that the matter should be governed by the later treaty, or where the provisions of the later treaty "are so far incompatible with those of the earlier one that two treaties are not capable of being applied at the same time" (Articles 58(1) and 59(1)).

Examples: Articles Expressing Termination

1. Example : Forced Labour Convention

Article 30

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until ten years after the date on which it is registered with the International Labour Office.

2. Example: Convention against Torture

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs

prior to the date at which the denunciation becomes effective, nor shall denunciation in any way prejudice the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

3. Example: Geneva Convention relative to the Protection of Civilian Persons in Time of War

Article 158
Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The Denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until Peace has been concluded, and until after operations connected with the release, reparation and re-establishment of the persons protected by the present Convention have been terminated.

The denunciation shall take effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfill by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

4. Example: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

Article 14

1. The application of this Convention shall be divided into successive periods of three years, of which the first shall begin on the date of entry into force of the Convention in accordance with paragraph 1 of article 13.

2. Any State Party may denounce this Convention by a notice addressed by that State to the Secretary-General not less than six months before the expiration of the current three-year period. The Secretary-General shall notify all other Parties of each such notice and the date of the receipt thereof.

3. Denunciation shall take effect at the expiration of the current three-year period...

11.4 Material Breach

The Convention recognizes that a material breach by one party permits the other party or parties to a treaty to invoke the breach as a basis for termination or suspension (Article 60(1)). The effect of a material breach varies according to whether the treaty is *bilateral* or *multilateral*:

1. Bilateral treaty : In a bilateral treaty, a material breach may be invoked by the wronged party to terminate the treaty or suspend its operation in whole or in part.

2. Multilateral treaty: A multilateral treaty allows the wronged parties to suspend by unanimous agreement the operation of the treaty in whole or in part or to terminate it either "in the relations between themselves and the defaulting State, or as between all the parties."

A party specifically affected by the breach may invoke the

breach as a ground for suspension of the treaty in whole or in part between itself and the breaching party.

11.5 Supervening Impossibility of Performance

This provides that a party "may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance of an object indispensable for the execution of the treaty". This article was designed to cover such relatively rare events "as the submergence of an island, the drying up of a river or destruction of a dam or hydro-electric installation indispensable for the execution of a treaty" (Y.B.I.L.C., 1966, II, p.256). The effect of impossibility is not automatic, and a party must invoke the ground for termination (Article 61).

11.6 Fundamental Changes of Circumstances (*Clausula Rebus sic Stantibus*)

A party is not bound by a treaty if there has been a fundamental change of circumstances – *rebus sic stantibus* (which literally means "things remaining as they are") – since the treaty was concluded. The doctrine of *rebus sic stantibus* applies only in the most exceptional circumstances, so it cannot be used as an excuse to avoid an inconvenient treaty obligation (Article 62). Under the Convention the following criteria have to be met in order to invoke the clause:

1. The change must be of a fundamental character;
2. The change in circumstances must have been unforeseen;
3. The existence of those circumstances must have been an essential basis of the parties consent to be bound by the treaty, and
4. The effect of the change must be radically to transform the extent of obligations still to be performed under the treaty.

Note: Article 62 was referred to by the International Court of Justice in the *Fisheries Jurisdiction Case* (*U.K. v. Iceland*)

where the Court said that the article, "may in many respects be considered as a codification of existing customary law on the subject" (ICJ Reports, 1973, pp. 3, 18).

11.7 Severance of Diplomatic or Consular Relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal obligations between the parties except in so far as the existence of diplomatic or consular relations is essential for the application of the treaty (Article 63).

Article 44 indicates that the termination of an agreement normally applies to the whole treaty unless the treaty provides otherwise or the parties agree otherwise. An exception may apply if the ground for termination relates to a particular paragraph which can be separated from the rest of the treaty. These paragraphs may be terminated if their acceptance was not an essential basis of the consent of the other parties to be bound and if continued performance of the rest of the treaty would not be unjust. A party which is a victim of fraud or corruption has the option of invalidating the agreement as a whole or in part. Such an option is not available in regard to the use or threat of force or violation of *jus cogens*.

11.8 Armed Conflict Between Contracting Parties

The effect of war upon an existing treaty between belligerent states is a disputed problem in international law.

According to the Convention the effect of war between contracting parties shall "not prejudge any question that may arise in regard to a treaty.....from the outbreak of hostilities between States" (Article 73).

The Institute of International Law has in The Effect of Armed Conflicts on Treaties Resolution of the Institute de droit international addressed the issue of war between contracting parties. "The outbreak of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties in

force between the parties to the armed conflict" (Article 2, 1985 Helsinki Session).

However, in reality war may have this effect where it produces a fundamental change of circumstances or leads to impossibility of performance. Treaties that are accepted as law-making treaties may simply be suspended by war and remain in force because they are considered of great importance to the entire international community.

11.9 Dispute Resolution

The Convention sets out the procedures to be followed if a treaty dispute occurs (Articles 65-66). The available remedies for non-fulfillment include submission of the dispute to the International Court of Justice, diplomatic negotiation and arbitration. In most cases the treaty itself will indicate the preferable method in which the dispute is to be resolved. However, the Convention does not give any guidelines as to what happens if a peaceful method of settlement should fail (See *Air Services Agreement Case*, (*Fr. v. U.S.* 1978)).

Example: Settlement of Disputes

1. Example: International Convention on the Suppression and Punishment of the Crime of *Apartheid*

Article XXI

Disputes between States Parties arising out of the interpretation, application or implementation of the present Convention which have not been settled by negotiation shall, at the request of the States parties to the dispute, be brought before the International Court of Justice, save where the parties to the dispute have agreed on some other form of settlement.

12 – New States and Old Treaty Obligations

12.1 State Succession

What happens to a State's treaty obligations when it is succeeded by another State? This question will now be addressed.

12.2 The Clean Slate Doctrine

The general rule indicates that the "*clean slate*" view is favoured with respect to successor states, i.e., that a State is not bound by its predecessors. A State has a choice to assume a multilateral treaty of its predecessor but is not, however, obliged to do so. A bilateral agreement bases its continuance upon agreement, either expressed or implied, between the succeeding State and the other contracting State.

Articles 11 and 12, (**Vienna Convention on Succession of States in Respect of Treaties** (1978)) however, provide an exception to the general rule, indicating that the clean slate principle does not apply in regard to treaties establishing boundaries and territorial regimes, and to those imposing restrictions on a territory for the benefit of another State. In such cases, a successor State is bound by the treaties to which its predecessor has been a party (Articles 8-12, 15-17 and 24).

Note: As of January 1996 the Vienna Convention on the Succession of States in Respect of Treaties had not entered into force. This Convention, as was the intention with the Vienna Convention on the Law of Treaties, is intended primarily as a codification of pre-existing customary law. However, not all

of its provisions are considered declaratory of existing customary law.

Example: Model of a Notification of Succession

WHEREAS (name of State) assumed responsibility for its international relations.

NOW THEREFORE, I (name and exact title of the Head of State, head of Government or Minister for Foreign Affairs) do hereby declare that the Government (name of State), having considered the treaties to which the former was a party, wishes to succeed to the same and undertakes faithfully to perform and carry out all the stipulations therein contained with effect from (date – normally, that of assumption of responsibility for international relations by the successor State)

* **FURTHERMORE,** I hereby declare that the Government of (name of State) does not maintain the following reservations, declarations and objections made prior to assumptions by (name of State) or responsibility for its international relations.

IN WITNESS WHEREOF I have signed this notification at (place) on (date).

(Signature)

* If the succeeding State does not wish to maintain any reservations, declarations or objections which the former State formulated to treaties, this declaration should be added to its notification.

Example: Non-Succession-Implied

1. Example: Constitution of the International Labour Organization

Article 19

9. With a view to promoting the universal application of

Conventions to all peoples, including those who have not yet attained a full measure of self-government, and without prejudice to the self-governing powers of any territory, Members ratifying Conventions shall accept their provisions so far as practicable in respect of all territories for whose international relations they are responsible.

[The following paragraphs, a to e, deal with the obligation to bring each Convention to the attention of the government of a territory and to report to the Director-General of the I.L.O. the position of the law and practice in territories for which the Convention is not in force].

(f) This transitory paragraph shall cease to be applicable to the peoples of dependent territories as they become independent.

12.3 Newly Formed States

A newly formed state does not automatically become a party to an international agreement concluded by its predecessor state. The new state, however, has the option to be a party to a treaty, either explicitly or impliedly, and may become party upon the agreement or by the acquiescence of the other parties.

Note: Most successions witnessed in this century have resulted from peace treaties or from decolonization. Successions have recently included the unification of Germany, which involved an absorption by the Federal Republic of Germany of all the territory of the German Democratic Republic without creating a new state. Others include the merger of North and South Yemen to form the unified Republic of Yemen, and the *dissolution* of the former U.S.S.R., the Socialist Federal Republic of Yugoslavia and the Czech and Slovak Federal Republic.

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PART II – CUSTOM AND OTHER SOURCES OF INTERNATIONAL LAW

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13 – Introduction

As indicated in the previous part international treaties, however numerous, only create binding rules for those States which have freely chosen to submit to the legal regime established by each of these treaties. Regarding third party States, as provided in Article 34 of the Convention, a treaty does not create any rights or obligations. However, if the provision in the treaty has crystallized into a rule of customary international law it will be binding on all states, not through the treaty provision, but through customary international law. Customary international law is valuable because of its potentially general application to States that are not parties to treaties, as well as its ability to "fill up gaps" of international concern not addressed in treaties.

Rules and norms of any legal system derive authority from their sources. Custom is considered to be the oldest and has also until recently been considered to be the most important source of international law. In today's world, however, the order of precedence has been reversed due to the huge number and comprehensive scope of treaties.

The meaning of the term "sources" of international law will now, step by step, be described in the next following sections.

13.1 Sources of International Law

The "sources" indicate where the law may be found and what the law is. In this context lawyers distinguish between two forms:

1. Formal sources: *constitute what the law is*
2. Material sources: *only identify where the law may be found*

Note: "For example, a rule will be legally binding if it meets the requirements of custom, which is a formal source of international law, and its substance will be indicated by state practice, which is the material source of custom" (See Harris p. 25, and also under section 13.4).

13.2 Comparison Between Municipal and International Law

From the point of view of sources there is a major difference between a sophisticated *municipal legal system* and the *international legal system.*

In a municipal legal system, which has a written constitution identifying its principal organs of government, sources may, for instance, be identified in the form of Parliamentary legislation and judicial decisions.

However, the international legal system does not posses an international constitution identifying the principal organs of government, nor is there a legislature or a court system with compulsory jurisdiction over the members of the international community.

The consequence is that in international law the distinction between formal and material sources is difficult to maintain.

In the absence of "law creating" sources, the closest one can get in evaluating the binding force of international law is by studying the provisions of Article 38 of the Statute of the International Court of Justice.

Note: The International Court of Justice (ICJ) "the World Court", successor to the League of Nations Permanent Court of International Justice, is the principal judicial organ of the United Nations (Article 1 of the Statute of the International Court of Justice) and its Statute is annexed to the Charter of the UN. The Court is open to the members of the UN. However, a state which is not a UN member may become a party to the Statute, on conditions determined in each case by the General Assembly on the recommendation of the Security

Council (Article 93 of the UN Charter). The Court is not open to private individuals. All countries which are parties to the Statute may submit cases to it under the conditions laid down by the Security Council. In addition the Security Council may recommend that a legal dispute be referred to the Court.

13.3 Article 38 of the Statute of the ICJ

Article 38 does not mention the word sources or define its meaning but rather indicates how the Court, in accordance with international law, is to settle the disputes before the Court.

Article 38 reads: 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means of the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex ae quo et bona*, if the parties agree thereto.

13.4 Article 38 – in general

Article 38 is the general provision accepted by the international community as indicating the list of the sources of international law.

Article 38(1)(a)-(c) (treaties, custom and general principles) are *formal sources* whereas judicial decisions and legal teachings, Article 38(1)(d) are *material sources*.

The enumeration of sources in Article 38 does not lay down a hierarchical structure. However, it is evident that the Court in settling an international dispute has to follow the following order:

1. First of all it has to apply the relevant existing treaty between the parties to the dispute:
2. If no prevailing provision exists a custom which has become legally binding should be applied:
3. If the Court cannot identify either an existing treaty provision or a legally binding custom then "general principles of law recognized by civilized nations" may be called upon.
4. Finally, according to Article 38 judicial decisions and the teachings of publicists may be utilized by the Court in order to determine the rules of international law.

14 – International Custom

The behavior of the international community is the basic component in the creation of customary international law which is binding upon all States. Certain norms of behavior, accepted and believed to be binding in the international community have crystallized into rules of customary international law. In a sophisticated legal system custom plays a rather unimportant role, whereas in an international perspective, with the absence of a legislature, the absence of an executive body and a primitive system of sanctions, custom has throughout the years (at least until recently) been playing a dynamic role as a source of law in the development of international law. Its contribution can still be seen in the provisions of numerous treaties which reflect previously established rules of customary international law. A good example is the 1982 UN Convention on the Law of the Sea which, in major parts, represents a codification of customary law.

Article 38 of the Statute of the International Court of Justice lists custom as the second source of international law and defines it "as evidence of general practice accepted as law". Thus custom is a formal source of international law and its existence will be evidenced by state practice which is the material source of custom.

14.1 Evidence of State Practice

The evidence of state practice is substantial and can be found in published materials such as diplomatic correspondence, policy statements, press releases, the opinions of official legal advisers, official manuals on legal questions, e.g., manuals of military law, executive decisions and practices, orders to naval forces etc., comments by governments on drafts produ-

ced by the International Law Commission, state legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, and resolutions relating to legal questions in the United Nations General Assembly. All of these can be used as evidence of state practice. See also the *Paqueta Habana* (1900), 175 U.S. 677, 700-1.

14.2 The Elements of Custom

The objective and subjective elements of custom

In order for a custom to crystallize into customary law, it is enough if a state practice is followed by a small number of states in a manner which creates a customary rule. However, there cannot be a conflicting practice in relation to the customary rule.

The validity of a rule of customary international law is linked to two elements which have to be present. These are the material (objective) and the *psychological* (subjective) elements.

a. The material element refers to the behavior and practice of States.

b. The psychological element is the subjective conviction of a state that a behavior regarding a particular subject matter is mandatory and not purely a question of free will. Thus, the State's opinion is that the practice in question is a matter of law i.e., o*pinio juris*.

The International Court of Justice in its decisions must assess any alleged rule of customary international law on the basis of its *objective* and *subjective elements*.

These two elements will now be looked into further.

14.3 The Objective Elements of Custom

The problems with customary international law, in a strict sense, are numerous. For instance, does the behavior of states

have to satisfy certain criteria? Or does the practice of a state have to be practiced for a specific period of time?

(a) **Duration:** Duration relates to the length of the time a practice has been followed. A long duration may be helpful, but the ICJ indicated in the *North Sea Continental Shelf Cases* that passage of only a short period of time may be enough when the state practice has been extensive and virtually uniform.

(b) **Uniformity and consistency of the practice:** Uniformity means that the practice of states should not differ much from state to state. Consistency means that there should not be any discrepancies in the practice of states from one relevant instance to another.

(c) **Generality of the practice:** Relates to if the practice is widespread among a majority of states. If only a few States follow a practice, or if the practice is common in only one area of the world then that practice will not generate customary international law for all states. However, all states may be bound by custom arising from generally followed practices without the need for universality. It may be possible, nevertheless, for states which object to particular general practices to avoid, in certain circumstances, being obligated as a matter of customary law, namely in the following cases:

***i.* Persistent objector:** It is generally understood that if a state is acting as a persistent objector to a particular custom on account of having objected to the relevant practice from the beginning of its transformation into customary international law, then that state will not be bound by that rule. (*Anglo-Norwegian Fisheries Case* (1951)) On the other hand, there is the:

***ii.* Subsequent objector:** If a state is a subsequent objector, who remained silent during the formation of the practice and who reacted only after that the practice had become law, it would not have any possibility to escape being obligated by the new practice unless other states accept the subsequent objector's attempts to avoid being bound.

(d) **Regionality of the Practice:** In the *Asylum Case* the Court came to the conclusion that customary law may also be limited to a regional grouping of states. Thus, a State may depend on regional custom so long as it can prove the existence of the elements of customary law (Colombia *v.* Peru, I.C.J. Reports 1950, p. 266).

14.4 The Subjective Element of Custom (*Opinio juris et necessitatis)*

This is the belief that a certain practice is obligatory in order to create a binding rule of international law. As stated above, Article 38(1)(b) of the Statute of the International Court of Justice refers to a "general practice accepted as law". A simple (discretionary) act performed on the basis of a political or non-legal motive is not accepted as law and only creates *usage* or what in international law is called comity.

State practice combined with the conviction that a certain form of conduct is required by international law defines *opinio juris et necessitatis* (in short *opinio juris*). Thus, there is a subjective element (referred as the psychological element) which is the state of mind in relation to the practice in the formation of customary law.

The following cases have helped to further develop the notion of *opinio juris*.

In the *Lotus Case* of 1927 (P.C.I.J. Rep., Series A, No. 10) a French steamer, the Lotus, and the Turkish steamer, the Boz-Kourt, collided on the high seas resulting in casualties allegedly based on the negligence of the French officer in charge of the Lotus. Upon arrival in Turkish waters, criminal proceedings were initiated in the Turkish courts against the officer in charge of the Lotus. The dispute was eventually submitted to the Permanent Court of International Justice. The French argument was that there was a customary rule of international law granting exclusive criminal jurisdiction to the state whose flag the ship was flying, while Turkey argued that there was a permissive rule empowering Turkey to try

the officer. The Court accepted the Turkish argument and rejected the French position. It indicated that one could not derive *opinio juris* from a particular practice unless the state involved was "conscious of having a duty in that regard".

In the *North Sea Continental Shelf Cases* (I.C.J. Rep, 1969, p.3), the Court attempts to show that Article 6(2) of the 1958 Geneva Convention on the Continental Shelf, dealing with the median line delimitation of adjoining areas of the continental shelf had become part of customary international law. The Court took the view that a practice which is generally followed but which states feel they are not legally bound by cannot therefore be labeled as being the law: "*...Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the opinio juris sive necesitatis. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation*". The Court has taken a more or less similar approach in the *Case of Nicaragua v. United States* (Merits), where the Court referred to the North Sea Cases.

Note: Thus, both *opinio juris* and state practice are necessary ingredients in the formation of customary international law.

15 – Treaties

Article 38(1)(a) of the Statute of the International Court of justice indicates as a source of law "international conventions, whether general or particular, establishing rules expressly recognized by the contesting state". "Conventions" in the wording of the article means "treaties" and will in this context only be studied from the point of view that they constitute a source of law. The technicalities of treaty law have been examined in the first part of this book and will therefore not be discussed under this section. As has already been stated, the guidance to the International Court of Justice in deciding a dispute is that, if there is a relevant treaty provision between contesting states, then that provision must be applied before examining any other "source" stipulated in article 38. The treaties referred to by the Article may be between two states (bilateral) or between more than two states (multilateral). There are an increasing number of multilateral treaties to which a large number of states are signatories which create general rules for future conduct for the parties. These Treaties, of which the Vienna Convention is a good example, are labeled "law making" treaties or "international legislation" and their provisions may become customary international law with the likelihood of tacit acceptance by the majority of states.

A bilateral treaty or a treaty between relatively few states does not have the same impact as a "law-making treaty" and therefore only creates particular law between the signatory states. However, one should be aware of the point that the legal effect of multilateral treaties cannot be compared to the effect of legislation in national law. Multilateral treaties can thus, in comparison to national legislation, only be given

quasi-legislative effect. This is an effect which at least in principle is not granted to bilateral treaties. Bilateral or multilateral treaties may provide evidence of customary rules. If a provision between two states is contained repeatedly in bilateral treaties it may be regarded as evidence of the existence of a specific rule of customary law.

The easiest and most evident way of determining what has been agreed upon between states is by studying treaties. During the Cold-War era Soviet lawyers emphasized the superiority of treaties as being the most predominant source of international law and today that view can be said to have won international acceptance. (Kozenikov, ed International Law (1961), Tunkin, Theory of International Law, (1970)).

15.1 Relationship Between Treaties and Customary International Law

Depending on the circumstances, treaties may be given equal weight with custom, prevail over custom, be proof of custom or codify custom.

In the *Wimbledon Case* of 1923 (P.C.I.J. Rep, Series A, No. 1) the Permanent Court of International Justice had to consider the implications of Article 380 of the treaty of Versailles of 1919 which guaranteed that the Kiel Canal "....shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality". German officials had stopped the passage of the *s.s. Wimbledon,* a British ship carrying armaments through the Kiel Canal to Poland, which at that time was at war with Russia, on the ground that a customary rule of international law did not allow the passage of armaments of war through the territory of a neutral state to the territory of a belligerent. The existence of such a customary rule was recognized by the Court. Nevertheless it held that the treaty provision took precedence.

The conclusion drawn from the Wimbledon case indicates that if a treaty and a customary rule, having the same hierar-

chical status, are in conflict with each other in a dispute, then the treaty provision shall prevail. However, a treaty may never prevail over a customary rule if the latter is *jus cogens* (a peremtory norm of general international law).

16 – *General Principles of Law*

Article 38(1)(c) of the Statute of the International Court of Justice enumerates "the general principles of law recognized by civilized nations" as the third source of law after treaties and custom. Compared to the previous two sources the "general principles of law" are not so much a source of law but more a method of using existing general principles recognized in national law as a source when no other suitable sources can be identified and applied in a dispute. A general principle of law is a principle so fundamental that it is virtually recognized in every major legal system of the world.

The idea behind the Statute's rather vague formulation regarding the general principles of law is to provide the Court the possibility to deliver judgments based on legal principles in all disputes. This avoids the possibility of the Court declaring itself incompetent due to the lack of applicable legal rules. The inability to deliver a judgment based on law would severely weaken the reliability of the International Court of Justice.

In a national system a judge in a "*non-liquet*" situation – a situation when a Court is unable to deliver a judgment based on legal principle – would approach the problem by finding a suitable analogy from already existing laws, or from basic legal principles, such as *justice* and *equity*. Subsequently a judge in an international dispute is given the opportunity to find analogies by deducing general principles which are common to the majority of States of the world. Some of the principles deriving from national law that have been drawn by international tribunals, e.g. the International Court of Justice and its predecessor the Permanent Court of International Justice and identified in all major legal systems of the world,

have been those regarding the responsibility of a state for the acts of its agents (*Fabiani case 1896*), the rule that no one can be a judge in his own suit (principle of estoppel (*Temple case 1961*)), the principle of *litis pendens, res judicata,* and the duty of reparation for international wrongs *(Chorzow Factory Case 1928*).

Note: General principles were those principles as understood by "civilized nations". The term "civilized nations" has in reality, for obvious reasons, been dropped. Its Eurocentric connotations are unacceptable in today's international community. The source is now described as the general principle of law "common to the major legal systems of the world".

17 – Subsidiary means

17.1 Judicial Decisions

Article 38(1)(d) of the Statute directs the Court to apply judicial decisions "subject to the provisions of Article 59....., as subsidiary means for the determination of rules of law". Article 59 states that "...the decisions of the Court has no binding force except between the parties and in respect of that particular case". Article 59 implies that the Court is not obliged to follow previous decisions. Nevertheless, the International Court of Justice and international tribunals always seem to take previous decisions into account when settling disputes. For obvious reasons forseeability as to what the law is on a particular issue creates certainty for those participating in the legal system and is a reason for the Court to maintain judicial consistency.

It is understood that the Court should apply the law and not create new law. However, the International Court of Justice has since 1947 played a significant role in the progressive development of the law, e.g., the Reparation Case, the Nottebohm Case, and the Anglo-Norwegian Fisheries Case demonstrate the Court's influence. The Court's judgments do not constitute a formal source of law but can be regarded as authoritative evidence of the state of the law and the practical significance of the term "subsidiary means".

Article 38 does not contain any limitation to international tribunals, it simply refers to "judicial decisions....as subsidiary means". So if a decision from a municipal court is accurate, it can be applied by the International Court. Judgments from municipal tribunals regarding diplomatic immunity and from prize-courts regarding the legality of the seizure of ships and cargoes in time of war have been used as subsidiary

means (*The Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812) U.S. Supreme Court).

17.2 The Writings of Publicists

Included among the "subsidiary means for the determination of rules of law" are also "the teachings of the most highly qualified publicists of the various nations" which may be referred to by the court in settling a dispute. The writings of "learned writers" can both be used as evidence of customary law and also exercise a certain amount of influence on the development of international law. In the formative period of the international legal system, before any great wealth of state practice or judicial precedent existed, the writings of learned publicists played an important role in the articulation of some basic principles of international law. However, with the increasing amount of evidence regarding state practice throughout the years, the role of writers declined. Nevertheless, there is still a range of areas where writers may play an important role in elaborating, assessing and ascertaining what international law is on a specific issue, e.g., environmental law and the law of the sea.

18 – Equity

In the case on *Diversion of Water from the River Meuse* (P.C.I.J Reports, Series A7B, No 70, pp 76-77 (1937) Judge Hudson in his individual opinion stated that "what are widely known as principles of equity have long been considered to constitute a part of international law, and as such they have often been applied by international tribunals". Thus, equity would in the wording of Judge Hudson appear to be part of that reservoir of principles which was discussed above, by virtue of article 38(1)(c) i.e., principles incorporated in all modern legal systems.

In the *North Sea Continental Cases*, the Court indicated that just and equitable decisions find their "objective justification in considerations lying not outside but within the rules".

In the *Fisheries Jurisdiction Case* (1974) the Court saw the main problem as "not a matter of finding simply an equitable solution, but an equitable solution derived from the applicable law".

As we have seen from the various cases the problem with equity is to try and fit it into the scheme of Article 38. Since "equity" is used in the sense of fairness and reasonableness which is analogous to general principles one may ask why equity is not embodied under article 38(1)(c). The main reason is found in the idea that general principles are mainly related to procedural techniques, while "equity" as a concept reflects values, which are difficult to define but which may extensively affect the implementation of the law. Equity is not a source per se, but plays a subsidiary role in determining existing rules.

Article 38(2) of the Statute of the International Court of

Justice gives the Court the power to decide a case *ex aequo et bona*, if the parties agree thereto. This power of decision concerns situations of compromise and conciliation and should be distinguished from the concept of fairness and reasonableness. However, the use of "equity" is not very clear and various ways of interpretation have therefore been developed.

19 – Progressive Developments

As indicated above Article 13(1)a of the UN Charter gives the General Assembly the responsibility to initiate studies and make recommendations for the purpose, of "....encouraging the progressive development of international law and its codification". Also, as a means for the discharge of the responsibilities to further the progressive developments of international law the General Assembly created the International Law Commission with a mandate to prepare drafts of conventions on subjects for which the development of binding treaty law appears desirable (*see* p. 18, infra).

Article 15 of the of the Statute of the International Law Commission defines the expression "progressive developments of international law" for the purpose of the Statute as meaning "the preparation of draft Conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of states". Similarly, it defines the expression "codification of international law" as meaning "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine".

A substantial part of customary international law has been codified in international conventions prepared by the ILC, approved by the General Assembly and adopted by international conferences. Most significant of these conventions were the law of treaties on diplomatic and consular immunities and the law of the sea.

20 – Other Possible Sources of International Law

International society has changed dramatically since the day when Article 38 was drafted by the Advisory Committee of Jurists appointed by the League of Nations. It may therefore be advisable to examine whether these recently examined "sources" are the only sources? The expanding character of international law and the dynamic progression of the sources of international law make it advisable to further investigate this issue.

Closest in line to be upgraded as a "new source" of international law are United Nations General Assembly Resolutions. The United Nations has throughout its 50 year history increased its membership from 51, the original signatory states to the UN Charter in 1945, to almost universal acceptance today (185 member states). According to the UN Charter, only questions accepted by the Assembly of a procedural and budgetary character are legally binding on members. Resolutions in all other areas are considered to be recommendations. Nevertheless, when resolutions are concerned with "Declarations of Principles", and are accepted by a majority vote, they are considered to have a moral effect and reflect the opinions of governments in the specific subject matter area.

The concept of "instant customary law" has been developed, signifying the crystallization of customary international law in the absence of *usus*, provided that the *opinio juris* of the states concerned can be clearly established (B. Cheng, "*United Nations resolutions on Outer Space: "Instant" International Customary Law?*", 5 Indian Journal of Interna-

tional Law (1965), pp 23-48 (36)).

Even in cases when Resolutions are labeled general principles, they have an effect on the progressive development of the law and the swift crystallization of customary rules.

The General Assembly Resolutions that can be considered to have had an impact as "law-making" are the Resolution (Resolution no 95;11 Dec. 1964) which affirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal", the Resolution on the Prohibition of the Use of Nuclear Weapons for War Purposes (Resolution no 1653 (XVI), 24 Nov. 1961), the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution no. 1514 (XV), 14 Dec. 1960), the Declaration on Permanent Sovereignty over Natural Resources (Resolution no 1803 (XVII), 14 Dec. 1962) and the Declaration of Legal Principles Governing Activities of States in the Exploration and Use of Outer Space (Resolution no 1962 (XVIII)).

However, the legal effect of General Assembly Resolutions in the creation of new law is difficult to assess. If resolutions are to be considered as law-making, a coherent attitude has to be developed towards them. The current situation, in which focussed upon they are due to subject-matter interest and the extent the specific resolutions receive the support of the principally affected states in question, is highly unsatisfactory.

The voting on General Assembly Resolutions is of great interest because it may give a clue to of what the law is or possibly indicate what the law should be. The resolution may enunciate principles or rules which later state practice, combined with *opinio juris*, adopts as customary law.

Further Reading

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Vienna Convention on the Law of Treaties (1969)

PART I. INTRODUCTION

Article 1: Scope of the present convention

The present Convention applies to treaties between States.

Article 2: Use of terms

1. For the purposes of the present Convention:

(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "Ratification", "acceptance", "approval" and „accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) "Full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a

treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(e) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(f) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(h) "Third State" means a State not a party to the treaty;

(i) "International organisation" means an intergovernmental organisation.

2. The provisions of paragraph 1 regarding the use of tenns in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3: International agreements not within the scope of the present convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(a) The legal force of such agreements;

(b) The application to them of any of the rules set forth in the present Convention to which they would be subject under international law independent-

ly of the Convention;

(c) The application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4: Non-retroactivity of the present convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5: Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES SECTION 1. CONCLUSION OF TREATIES

Article 6: Capacity of states to conclude treaties

Every State possesses capacity to conclude treaties.

Article 7: Full powers

1.A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if.

(a) He produces appropriate full powers; or

(b) It appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8: Subsequent confirmation of an act performed without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9: Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting unless by the same majority they shall decide to apply a different rule.

Article 10: Authentication of the text

The text of a treaty is established as authentic and definitive:

(a) By such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) Failing such procedure by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11: Means of expressing consent to be bound by a treaty

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 12: Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) The treaty provides that signature shall have that effect;

(b) It is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) The intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) The initialling of a text constitutes a signature of

the treaty when it is established that the negotiating States so agreed;

(b) The signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13: Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) The instruments provide that their exchange shall have that effect; or

(b) It is otherwise established that those States were agreed that the exchange of instruments shall have that effect.

Article 14: Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) The treaty provides for such consent to be expressed by means of ratification;

(b) It is otherwise established that the negotiating States were agreed that ratification should be required;

(c) The representative of the State has signed the
treaty subject to ratification; or

(d) The intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 15: Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:

(a) The treaty provides that such consent may be expressed by that State by means of accession;

(b) It is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(c) All the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16: Exchange or deposit of instruments of ratification, acceptance, approval or accession

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(a) Their exchange between the contracting States;

(b) Their deposit with the depositary; or

(c) Their notification to the contracting States or to
the depositary, if so agreed.

Article 17: Consent to be bound by part of a treaty and choice of differing provisions

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18: Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2. RESERVATIONS

Article 19: Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to treaty, 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

(c) In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

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 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.

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.

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.

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.

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.

SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

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 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.

Article 25: Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) The treaty itself so provides; or

(b) The negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26: "Pacta sunt servanda"

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27: Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28: Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29: Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30: Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) As between States parties to both treaties the

same rule applies as in paragraph 3;

(b) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3. INTERPRETATION OF TREATIES

Article 31: General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty

and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32: Supplementary means of interpretation Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 3 1:

(a) Leaves the meaning ambiguous or obscure; or

(b) Leads to a result which is manifestly absurd or unreasonable.

Article 33: Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES

Article 34: General rule regarding third states

A treaty does not create either obligations or rights for a third State without its consent.

Article 35: Treaties providing for obligations for third states

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36: Treaties providingfor rights for third states

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37: Revocation or modification of obligations or rights of third states

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38: Rules in a treaty becoming binding on third states through international. custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV. AMENDMENT AND MODIFICATION OF TREATIES

Article 39: General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part 11 apply to such an agreement except in so far as the treaty may otherwise provide.

Article 40: Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(a) The decision as to the action to be taken in regard to such proposal;

(b) The negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement,

Article 41: Agreements to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) The possibility of such a modification is provided for by the treaty; or

(b) The modification in question is, not prohibited by the treaty and:

(i) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42: Validity and continuance inforce of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43: Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44: Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) The said clauses are separable from the remainder of the treaty with regard to their application;

(b) It appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) Continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases failing under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45: Loss of a right to invoke a groundfor invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdra-

wing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) It shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) It must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

SECTION 2. INVALIDITY OF TREATIES

Article 46: Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47: Specific restrictions on authority to express the consent of a state

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48: Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49: Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50: Corruption of a representative of a state

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51: Coercion of a representative of a state

The expression of a State's consent to be bound by a treaty which has been

procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52: Coercion of a state by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53: Treaties conflicting with a peremptory norm of general international law ("jus cogens")

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54: Termination of or withdrawalfrom a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(a) In conformity with the provisions of the treaty; or

(b) At any time by consent of all the parties after consultation with the other contracting States.

Article 55: Reduction of the parties to a multilateral treatv below the number necessaryfor its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56: Denunciation of or withdrawalfirom a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(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.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 58: Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) In conformity with the provisions of the treaty; or

(b) At any time by consent of all the parties after consultation with the oth-

er contracting States.

Article 58: Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(a) The possibility of such a suspension is provided for by the treaty; or

(b) The suspension in question is not prohibited by the treaty and:

(i) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) Is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59: Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(a) It appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60: Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) The other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) In the relations between themselves and the defaulting State, or

(ii) As between all the parties;

(b) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) Any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) A repudiation of the treaty not sanctioned by the present Convention; or

(b) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61: Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62: Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for tenninating or withdrawing from the treaty unless:

(a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) The effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) If the treaty establishes a boundary; or

(b) If the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63: Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64: Emergence of a new peremptory norm of general international law ("jus cogen ")

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

Article 65: Procedure to befollowed with respect to invalidity, termination, withdrawalfrom or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in casesof special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66: Proceduresforjudicial settlement, arbitration and conciliation

If, under paragraph 3 of Article 65. no solution has been reached within a period of twelve months following the date on which the objection was raised, the following procedures shall be followed:

(a) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) Any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations

Article 67: Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1 must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68: Revocation of notifications and instruments providedfor in articles 65 and 67

A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 69: Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) Acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70: Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71: Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:

(a) Eliminate as far as possible the consequences of any act per-formed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) Bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72: Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) Releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(b) Does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI. MISCELLANEOUS PROVISIONS

Article 73: Cases of state succession, state responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise In regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74: Diplomatic and consular relations and the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75: Case of an aggressor state

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 76: Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77: Functions of depostaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(a) Keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) Preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) Receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) Examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(e) Informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) Registering the treaty with the Secretariat of the United Nations;

(h) Performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Article 78: Noti,fications and communications

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(a) If there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(b) Be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

If transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1(e).

Article 79: Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) By executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(a) No objection has been raised, the depositary shall make and initial the correction in the text and shall execute a proces-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(b) An objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy ot a treaty, the depositary shall execute a procés-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 80: Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

PART VIII. FINAL PROVISIONS

Article 81: Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82: Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83: Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84: Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtyfifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 85: Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose tenn expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) One conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) One conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

Vienna Convention on Succession of States in Respect of Treaties (1978)

PART 1 GENERAL PROVISIONS

Article 1 – Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of treaties between States.

Article 2 – Use of terms

1. For the purposes of the present Convention.

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(h) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(c)"predecessor Stale" means the State which has been replaced by another State on the occurrence of a succession of States;

(d) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(e) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility, for the international relations of the territory to which the succession of States relates;

(f) "newly independent State" means a successor State the territory of which immediately, before the date of the succession of States was dependent territory for the international relations of which the predecessor State was responsible;

(g) "notification of succession" means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(h) "full powers" means in relation to a notification of succession or any, other notification under the present Convention a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(i) "ratification," "acceptance" and "approval mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(j) "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(k) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.,

(l) "party" means a State which has consented to be bound by the treaty

and for which the treaty is in force;

(m) "other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(n) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be -iven to them in the internal law of any State.

Article 3 – Cases not within the scope of the present Convention

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(a)the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;

(b)the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

Article 4 – Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to the effects of a succession of States in respect of:

(a)any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(b)any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Article 5 – Obligations imposed by international law independently of a treaty

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

Article 6 – Cases of succession of States covered by the present Convention

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

Article 7 – Temporal application of the present Convention

1.Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4.Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

Article 8 – Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State

1.The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States parties to those treaties by reason only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shalldevolve upon the successor State.

2.Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

Article 9 – Unilateral declaration by an successor State regarding treaties of the predecessor State

1.Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States parties to those treaties by reason only of the fact that the successor State has made, a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.

2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

Article 10- Treatiesprovidingfor theparticipation ofa successor State

1.When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party to the treaty, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2.If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party to the treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the, treaty, is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

Article 11 – Boundary régimes

A succession of States does not as such affect:

(a)a boundary established by a treaty, or

(b)obligations and rights established by a treaty and relating to the rdgime of a boundary.

Article 12 – Other territorial régimes

A succession of States does not as such affect:

(a)obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(b)rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State aria considered as attaching to the territories in question.

2.A succession of States does not as such affect:

(a)obligations relating to the use of any territory, or

to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(b)rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

3.The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

Article 13 – The present Convention and permanent sovereignty over natural wealth and resources

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

Article 14 – Questions relating to the validity of a treaty

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty.

PART II SUCCESSION IN RESPECT OF PART OF TERRITORY

Article 15 – Succession in respect ofpart of territory
When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

(a)treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(b)treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

PART III NEWLY INDEPENDENT STATES

SECTION 1. GENERAL RULE

Article 16 – Position in respect of the treaties of the predecessor State
A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

SECTION 2. MULTILATERAL TREATIES

Article 17 – Participation in treaties in force at the date of the succession of States
1.Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2.Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3.When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

Article 18 – Participation in treaties not in force at the of the succession of States

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2.Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3.Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation

4.When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5.When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty or is otherwise established.

Article 19 – Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval

1.Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2.For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3.Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent Stat would be incompatible with the object and purpose or the treaty or would radically change the conditions for its operation.

4.When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the partici-

pation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

Article 20 – Reservations

1.When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 17 or 18, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject-matter as that reservation.

2.When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 17 or 18, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.

3.When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

Article 21 – Consent to be bound by part of a treaty and choice between differing provisions

1.When making a notification of succession under article17 or 18 establishing its status as a party or contracting State to a multilateral treaty, a newly independent

State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2.A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States relates.

3.If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:

(a)the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or

(b)the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

Article 22 – Notification of succession

1 A notification of succession in respect of a multilateral treaty under article 17 or 18 shall be made in writing.

2.If the notification of succession is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3.Unless the treaty otherwise provides, the notification of succession shall:

(a)be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States,

(b)be considered to be made by the newly independent State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4.Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connection therewith by the newly independent State.

5.Subject to the provisions of the treaty, the notification of succession or the communication made in connection therewith shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

Article 23 – Effects of a notification of succession

1.Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2.Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except in so far as that treaty may be applied provisionally in accordance with article 27 or as may be otherwise agreed.

3.Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

SECTION 3. BILATERAL TREATIES

Article 24 – Conditions under which a treaty is considered as being in force in the case of a succession of States

1.A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(a)they expressly so agree; or

(b)by reason of their conduct they are to be considered as having so agreed.

2.A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

Article 25 – The position as between the predecessor State and the newly independent State

A treaty which under article 24 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as being in force also in the relations between the predecessor State and the newly independent State.

Article 26 – Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party

1. When under article 24 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(a)does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other Stateparty;

(b)is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(c)is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2.The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or. as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 24 that they so agreed.

3.The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 24 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

SECTION 4. PROVISIONAL APPLICATION

Article 27 – Multilateral treaties

1.If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2.Nevertheless, in the case of a treaty which falls within the category mentioned in article 14, paragraph 3, the consent of all the parties to such provisional application is required.

3.If at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4.Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5.Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 28 – Bilateral treaties

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

(a)they expressly so agree; or

(b)by reason of their conduct they are to be considered as having so agreed.

Article 29 – Termination of provisional application

1.Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 may be terminated:

(a)by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(b)in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.

2.Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 28 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3.Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4.Unless the treaty otherwise provides or it is other wise agreed, the provisional application of a multilateral treaty under article 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

SECTION 5. NEWLY INDEPENDENT STATES FORMED FROM TWO OR MORE TERRITORIES

Article 30 -Newly independent Statesformedfmm two or more territories

1.Articles 16 to 29 apply in the case of a newly independent State formed from two or more territories.

2.When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 17, 18, or 24 and at the date of the succession of States the treaty was in force, or consent to be bound bad been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a)it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b)in the case of a multilateral treaty not falling under article 17, paragraph 3, or under article 18, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c)in the case of a multilateral treaty falling under article 17, paragraph 3, or under article 18, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree; or

(d)in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3.When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 19 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

(a)it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b)in the case of a multilateral treaty not falling under article 19, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c)in the case of a multilateral treaty falling under article 19, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree.

PART IV UNITING AND SEPARATION OF STATES

Article 31 – Effects of a uniting of States in respect of treaties inforce at the date of the succession of States

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

(a)the successor State and the other State party or States parties otherwise agree; or

(b)it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

2.Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:

(a)in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;

(b)in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States parties otherwise agree; or

(c)in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3.Paragraph 2(a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 32 – Effects of a uniting of States in respect of treaties not in force at the date of the succession of States

1.Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2.Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.

3.Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4.If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5.Any treaty to which the successor State becomes a contracting State or a

party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(a)in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b)in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Paragraph 5(a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 33 – Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2.Paragraph 1 does not apply if it appears from the treaty or is otherwise establishes that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

4.Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:

(a)in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or

(b)in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree,

5.Paragraph 4(a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 34 – Succession of States in cases of separation of parts of a State

1.When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a)any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b)any treaty in force at the date of the succession of States in respect only of that part of the territory of the Predecessor State which has become a successor State continues in force in respect of that successor State alone.

2.Paragraph 1 does not apply if..

(a)the States concerned otherwise agree; or

(b)it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 35 – Position if a State continues after separation of part of its territory

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

(a)the States concerned otherwise agree;

(b)it is established that the treaty related only to the territory which has separated from the predecessor State; or

(c)it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 36 – Participation in treaties not inforce at the date of the succession of States in cases of separation of parts of a State

1.Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2.Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4.If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a cont-

racting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 37 – Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it bad signed that treaty and may thereby become a party or a contracting State to it.

2.Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3.If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 38 – Notifications

1.Any notification under articles 31, 32 or 36 shall be made in writing.

2.If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3.Unless the treaty otherwise provides, the notification shall:

(a)be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b)be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4.Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.

5.Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

PART V MISCELLANEOUS PROVISIONS

Article 39 – Cases of State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

Article 40 – Cases of military occupation
The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory.

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The Binding Force of Treaties Under International Law

Handbook for Government Lawyers and Human Rights Advocates

This handbook describes the mechanisms of how and when states are bound by international treaties as a consequence of international law. It is designed to be a simplified reference guide essential not only to government lawyers but also to a wider circle of officials and human rights advocates concerned with the results of treaty-making. Its aim is to provide assistance to the sphere of countries that the Swedish International Development Co-operation Agency (Sida) is working with. The handbook focuses on the general trends of the international law-making process. Two major areas are examined, i.e. the law of treaties and other sources of international law (primarily custom), which together must be considered as fundamental parts providing the basic substance of the international regime.

The objective of the first part, International Treaties, is to describe the binding force of treaties and the technicalities of the Vienna Convention of the Law of Treaties from a general point of view. The second part of the handbook describes the complex mechanisms of international law as such, and its binding quality on States.

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