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INTERNATIONAL LAW COMMISSION
Seventeenth session (second part)
Agenda item 2

DRAFT ARTICLES ON THE LAW OF TREATIES

Articles adopted by the Commission during the second part of its
seventeenth session, 3-28 January 1966

Article for inclusion in Part I, Section II

Article 4 (bis)

Subsequent confirmation of act performed without authority

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 4 as representing his State for that purpose is without legal effect unless afterwards confirmed by the competent authority of the State.

PART II: INVALIDITY, TERMINATION AND SUSPENSION
OF THE OPERATION OF TREATIES

Section I: General Rules

Article 30

Validity and continuance in force of treaties

1. The invalidity of a treaty may be established only as a result of the application of the present articles.
2. A treaty may be terminated or denounced or withdrawn from by a party only as a result of the application of the terms of the treaty or of the present articles. The same rule applies to suspension of the operation of a treaty.

Article 30 (bis)

Obligations of parties under other rules of international law

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 articles or of the terms of the treaty, shall not in any way impair the duty of any party to a treaty to fulfill any obligation embodied in the treaty to which it is also subjected under any other rule of international law.

Section II: Invalidity of Treaties

Article 31

Provisions of internal law regarding competence to conclude a treaty

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 of its internal law was manifest.

Article 32

Specific restriction on authority to express the consent
of the State

If the authority of a representative to express the consent of his 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 a consent expressed by him unless the restriction was brought to the notice of the other contracting State prior to his expressing such consent.

Article 33

Fraud

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

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Article 34

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 26 then applies.

Article 35

Coercion of a representative of the State^{1/}

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 personally shall be without any legal effect.

Article 36

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 the Charter of the United Nations.

Article 37

Treaties conflicting with a peremptory norm of
general international law (ius cogens)

A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

^{1/} The Commission decided to reserve until its eighteenth session the question of the coercion of a representative of a State.

Section III: Termination and Suspension of the Operation of Treaties

Article 38

Termination or the suspension of the operation of a treaty
by application of its own provisions

/Deleted/

Article 39

Denunciation of a treaty containing no provision
regarding termination

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 it otherwise appears that the parties intended to admit the possibility of denunciation or withdrawal.
2. A party shall give not less than twelve month's notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

Article 39 (bis)

Reduction of the parties to a multilateral treaty below
the number necessary for its entry into force

A multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

Article 40

Termination or suspension of the operation of treaties by agreement

/The Commission decided to postpone the decision on this article until its
eighteenth session/

/ The text proposed by the Drafting Committee reads as follows:

- "1. A treaty may at any time be terminated by agreement of all the parties.
- "2. The operation of a treaty may at any time be suspended by agreement of all the parties.
- "3. The operation of a multilateral treaty may not be suspended as between certain parties only except under the same conditions as those laid down in article 67 for the modification of a multilateral treaty."

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Article 41

Termination or suspension of the operation of a treaty implied from
entering into a subsequent treaty

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

(a) it appears that the parties intended that the matter should thenceforth be governed by the later 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 that such was the intention of the parties when concluding the later treaty.

Article 42

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 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 other party to suspend the operation of the treaty 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 the present article, consists in:

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

(b) the violation of a provision essential to the accomplishment of any of the objects or purposes of the treaty.

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

Article 43

Supervening impossibility of performance

A party may invoke an impossibility of performing a treaty as a ground for terminating 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.

Article 44

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 terminating 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 scope of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked:

(a) as a ground for terminating or withdrawing from a treaty establishing a boundary;

(b) if the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

Article 45

Establishment of a new peremptory norm of general international law

If a new peremptory norm of general international law of the kind referred to in article 37 is established, any existing treaty which is incompatible with that norm becomes void and terminates.

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Article 46

Separability of treaty provisions^{3/}

1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may only be exercised 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 articles may only be invoked with respect to the whole treaty except as provided in the following paragraphs or in article 42.
3. If the ground relates to particular clauses alone, it may only be invoked with respect to those clauses where:
 - (a) the said clauses are separable from the remainder of the treaty with regard to their application; and
 - (b) acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole.
4. In cases falling under article 33 the State entitled to invoke the fraud may do so with respect either to the whole treaty or to the particular clauses alone.
5. In cases falling under articles 35, 36 and 37, no separation of the provisions of the treaty is permitted.

Article 47

Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty^{3/}

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 31 to 34 inclusive or articles 42 to 44 inclusive if, after becoming aware of the facts:

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

^{3/} The Special Rapporteur proposed the inclusion of these articles in section 1 (General Rules) of this Part. The Commission reserved the question of the order of the articles until its eighteenth session.

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

Article 4a

Treaties which are constituent instruments of international organizations
or which have been drawn up within international organizations

/Deleted, in view of the inclusion of article 3 (bis) in Part I of the draft
articles/
