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## DOCUMENT A/CN.4/L.117 and Add.1

## Revised Draft Articles

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NOTE: The present document contains the text of the draft articles as revised by the Commission up to and including 12 July 1966, together with certain additional changes proposed by the Drafting Committee.

### Part I. Introduction

#### *Article 0.—The scope of the present articles*

The present articles relate to treaties concluded between States.

#### *Article 1.—Use of terms*

##### 1. For the purposes of the present articles:

(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) [Deleted by the Commission]

(c) [Deleted by the Commission]

(d) "Ratification", "Accession", "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.

(e) "Full powers" means a document emanating from the competent authority of a State designating a person 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.<sup>1</sup>

(f) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(f)(*bis*) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty.

<sup>1</sup> The addition of the final phrase, "or for accomplishing any other act with respect to a treaty." is proposed by the Drafting Committee.

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

(f)(*quater*) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force.

(f)(*quinqies*) "Third State" means a State not a party to the treaty.

(f)(*sexies*) "International organization" means an inter-governmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles 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 2.—Treaties and other international agreements not within the scope of the present articles*

The fact that the present articles do not relate:

(a) To treaties concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form shall not affect the legal force of such treaties or agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.

#### *Article 3(bis).—Treaties which are constituent instruments of international organizations or are adopted within international organizations*

The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization.

### Part II. Conclusion and entry into force of treaties

#### SECTION 1: CONCLUSION OF TREATIES

##### *Article 3.—Capacity of States to conclude treaties*

1. Every State possesses capacity to conclude treaties.
2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted

by the federal constitution and within the limits there laid down.

*Article 4.—Full powers to represent the State in the<sup>2</sup> conclusion of treaties*

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of<sup>2</sup> 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 only if:

(a) He produces an appropriate instrument of full powers; or

(b) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce an instrument of 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<sup>2</sup> 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 organ of an international organization, for the purpose<sup>2</sup> of adopting the text of a treaty.

*Article 4(bis).—Subsequent confirmation of an 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.

*Article 5.—Negotiation and drawing up of a treaty*

[Deleted by the Commission]

*Article 6.—Adoption of the text*

1. The adoption of the text of a treaty takes place by the unanimous agreement of 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 participating in the conference, unless by the same majority they shall decide to apply a different rule.

*Article 7.—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

<sup>2</sup> The deletion of references to "negotiation" and "negotiating" in the title, paragraph 1 and paragraph 2(b) and (c) of article 4 is proposed by the Drafting Committee.

(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 8.—Participation in a treaty*

[Deleted by the Commission]<sup>3</sup>

*Article 9.—The opening of a treaty to the participation of additional States*

[Deleted by the Commission]<sup>3</sup>

*Article 10.—Initialling and signature ad referendum as forms of signature*

[Deleted by the Commission and substance incorporated in article 11]

*Article 11.—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<sup>4</sup> that the negotiating States were agreed that signature should have that effect;

(c) The intention of the State in question 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<sup>4</sup> 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 12.—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<sup>5</sup> that the negotiating States were agreed that ratification should be required;

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

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

<sup>3</sup> See section headed "Question of participation in a treaty", in the commentary to article 12, p. 200.

<sup>4</sup> The wording "It is otherwise established" in paragraph 1(b) and "is established" in paragraph 2(a) is proposed by the Drafting Committee.

<sup>5</sup> The wording "It is otherwise established" is proposed by the Drafting Committee.

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 13.—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 or an amendment to the treaty provides that such consent may be expressed by that State by means of accession;

(b) It is otherwise established<sup>6</sup> 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 14.—Acceptance or approval*

[Deleted by the Commission and substance incorporated in article 12].

*Article 15.—Exchange or deposit of instruments of ratification, accession, acceptance or approval*

Unless the treaty otherwise provides, instruments of ratification, accession, acceptance or approval 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 16.—Consent relating to a part of a treaty and choice of differing provisions*

1. Without prejudice to the provisions of articles 18 to 22, 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 plain to which of the provisions the consent relates.

*Article 17.—Obligation of a State not to frustrate the object of a treaty prior to its entry into force*

A State is obliged to refrain from acts calculated to frustrate the object of a proposed treaty when:

(a) It has agreed to enter into negotiations for the conclusion of the treaty, while these negotiations are in progress;

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

(c) 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 TO MULTILATERAL TREATIES

*Article 18.—Formulation of reservations*

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty;

(b) The treaty authorizes specified reservations which do not include the reservation in question; or

(c) In cases where the treaty contains no provisions regarding reservations, the reservation is incompatible with the object and purpose of the treaty.

*Article 19.—Acceptance of and objection to reservations*

1. A reservation expressly or impliedly authorized by the 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 the treaty<sup>7</sup> 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, a reservation requires acceptance by all the parties.

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

4. In cases not falling under the preceding paragraphs of this article:

(a) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;

(b) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;

(c) An act expressing the 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 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 20.—Procedure regarding reservations*

1. A reservation, an express acceptance of a reservation, and an objection to a reservation must be formulated in

<sup>6</sup> The wording "It is otherwise established" is proposed by the Drafting Committee.

<sup>7</sup> The deletion of the words "and the circumstances of its conclusion" is proposed by the Drafting Committee.

writing and communicated to the other States entitled to become parties to the treaty.

2. If formulated on the occasion of the adoption of the text or upon 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 objection to the reservation made previously to its confirmation does not itself require confirmation.<sup>8</sup>

*Article 21.—Legal effects of reservations*

1. A reservation established with regard to another party in accordance with articles 18, 19 and 20:

(a) Modifies for the reserving State 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 such 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 agrees to consider the treaty in force 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*

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 or it is otherwise agreed, the withdrawal becomes operative only<sup>9</sup> when notice of it has been received by the other contracting States.

SECTION 3: ENTRY INTO FORCE

*Article 23.—Entry into force of a treaty*

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 is established after a treaty has come into force, the treaty enters into force for that State on the date when its consent was established unless the treaty otherwise provides.

<sup>8</sup> The transfer of the last sentence of paragraph 2 to become a new paragraph 3 is proposed by the Drafting Committee.

<sup>9</sup> The insertion of the word "only" is proposed by the Drafting Committee.

*Article 24.—Entry into force of a treaty provisionally*

1. A treaty may enter into force provisionally if:

(a) The treaty itself prescribes that it shall enter into force provisionally pending ratification, accession, acceptance or approval by the contracting States; or

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

2. The same rule applies to the entry into force provisionally of part of a treaty.

**Part III. Observance, application and interpretation of treaties**

SECTION 1: OBSERVANCE OF TREATIES

*Article 55.—Pacta sunt servanda*

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

SECTION 2: APPLICATION OF TREATIES

*Article 56.—Non-retroactivity of treaties*

Unless a different intention appears from the treaty or is otherwise established,<sup>10</sup> 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 57.—Application of treaties to territory*

Unless a different intention appears from the treaty or is otherwise established,<sup>10</sup> the application of a treaty extends to the entire territory of each party.

*Article 63.—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 inconsistent 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 41, 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 only to the earlier treaty, the earlier treaty governs their mutual rights and obligations;

<sup>10</sup> The wording "Unless a different intention appears from the treaty or is otherwise established" is proposed by the Drafting Committee.

(c) As between a State party to both treaties and a State party only to the later treaty, the later treaty governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 67, or to any question of the termination or suspension of the operation of a treaty under article 42 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 69.—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;

(b) Any subsequent practice in the application of the treaty which establishes the understanding 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 70.—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 69, or to determine the meaning when the interpretation according to article 69:

(a) Leaves the meaning ambiguous or obscure; or

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

#### *Article 72.—Interpretation of treaties expressed 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 expressed 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. Except in the case mentioned in paragraph 1, when a comparison of the texts discloses a difference of meaning which the application of articles 69 and 70 does not remove, a meaning which as far as possible reconciles the texts shall be adopted.

### SECTION 4: TREATIES AND THIRD STATES

#### *Article 58.—General rule regarding third States*

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

#### *Article 59.—Treaties providing for obligations for third States*

An obligation arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to be a means of establishing the obligation and the third State has expressly accepted that obligation.

#### *Article 60.—Treaties providing for rights for third States*

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

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 61.—Revocation or modification of obligations or rights of third States*

1. When an obligation has arisen for a third State in conformity with article 59, the obligation may be revoked or modified only with the mutual 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 60, 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 62.—Rules in a treaty becoming binding through international custom*

Nothing in articles 58 to 61 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law.

**Part IV. Amendment and modification of treaties***Article 65.—General rule regarding the amendment of treaties*

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

*Article 66.—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 every party 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; and article 63, 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 67.—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:

(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 objects and purposes of the treaty as a whole; and

(iii) Is not prohibited by 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 the modifications to the treaty for which it provides.

*Article 68.—Modification of treaties by subsequent practice*

A treaty may be modified by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions.

**Part V. Invalidity, termination and suspension of the operation of treaties**

## SECTION 1: GENERAL PROVISIONS

*Article 30.—Validity and continuance in force of treaties*

1. The validity of a treaty may be impeached only through the application of the present articles. A treaty the invalidity of which is established under the present articles is void.

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 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 State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law.

*Article 46.—Separability of treaty provisions*

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 articles 33 and 34(bis) the State entitled to invoke the fraud or corruption 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*

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(bis) 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

(b) 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.

## SECTION 2: 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 restrictions 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 knowledge<sup>11</sup> of the other negotiating States prior to his expressing such consent.

### *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 33.—Fraud*

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

<sup>11</sup> The substitution of the word "notice" by the word "knowledge" is proposed by the Drafting Committee.

*Article 34(bis).—Corruption of a representative of the 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 35.—Coercion of a representative of the 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 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 (jus 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.

## SECTION 3: TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

*Article 38.—Termination of or withdrawal from a treaty by consent of the parties*

A treaty may be terminated or a party may withdraw from a treaty:

(a) In conformity with a provision of the treaty allowing such termination or withdrawal; or

(b) At any time by consent of all the parties.

*Article 39(bis).—Reduction of the parties to a multilateral treaty below the number necessary for its entry into force*

Unless the treaty otherwise provides,<sup>12</sup> 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 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 is established<sup>13</sup> that the parties intended to admit the possibility of denunciation or withdrawal.

<sup>12</sup> The addition of the words "Unless the treaty otherwise provides", is proposed by the Drafting Committee.

<sup>13</sup> The wording "unless it is established" is proposed by the Drafting Committee.

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

*Article 40.—Suspension of the operation of a treaty 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 a provision of the treaty allowing such suspension;

(b) At any time by consent of all the parties.

*Article 40(bis).—Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only*

When a multilateral treaty contains no provision regarding the suspension of its operation, two or more parties may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension:

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

(b) Is not incompatible with the effective execution as between the parties as a whole of the objects and purposes of the treaty.

*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 from the treaty or is otherwise established<sup>14</sup> 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 from the treaty or is otherwise established<sup>14</sup> 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.

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 64.—Severance of diplomatic relations*

The severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations established between them by the treaty.

<sup>14</sup> The insertion of the words "from the treaty or is otherwise established" is proposed by the Drafting Committee.

*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.

SECTION 4: PROCEDURE

*Article 51.—Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty*

1. A party which claims that a treaty is invalid or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under the provisions of the present articles 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 grounds therefore.
2. If, after the expiry of a period which shall not be less than three months except in cases of special urgency, no party has raised any objection, the party making the notification may carry out in the manner provided in article 50 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 47, 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 50.—Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty*

1. 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 51 shall be carried out through an instrument communicated to the other parties.
2. 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 50(bis).—Revocation of notifications and instruments provided for in articles 51 and 50*

A notification or instrument provided for in articles 51 and 50 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 52.—Consequences of the invalidity of a treaty*

1. 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 nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.
3. In cases falling under articles 33, 35 or 36, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act 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 53.—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 articles:
  - (a) Releases the parties from any obligation further to perform the treaty;
  - (b) Does not affect any rights or obligations of the parties or any legal situation 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 53(bis).—Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law*

1. In the case of a treaty void under article 37 the parties shall:
  - (a) Eliminate as far as possible the consequences of any act done 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 45, the termination of the treaty:
  - (a) Releases the parties from any obligation further to perform the treaty;
  - (b) Does not affect any rights or obligations of the parties or any legal situation 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 54.—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 articles:

(a) Relieves 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 suspension;

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

2. During the period of the suspension the parties shall refrain from acts calculated to render the resumption of the operation of the treaty impossible.

**Part VI. Case of an aggressor state**

*Article Z.—Special provision regarding an aggressor State*

The present articles 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 28.—Depositaries of treaties*

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

*Article 29.—Functions of depositaries*

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:

(a) Keeping the custody of the original text of the treaty, if entrusted to it;

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

(c) Receiving any signatures to the treaty and any instruments and notifications relating to it;

(d) Examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question;

(e) Informing the States entitled to become parties to the treaty of acts, communications and notifications 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, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited.

(g) Performing the functions specified in other provisions of the present articles.

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 other States entitled to become parties to the treaty, or, where appropriate, of the competent organ of the organization concerned.

*Article 29(bis).—Notifications and communications*

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

(a) If there is no depositary, be transmitted directly 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;

(c) If transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 29, paragraph 1(e).

*Article 26.—Correction of errors in texts or in certified copies of treaties*

1. Where, after the authentication of the text of a treaty, the negotiating States are agreed that it contains an error, the error shall, unless they otherwise decide, 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 a separate 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:

(a) Shall notify the negotiating States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(b) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the contracting States;

(c) If an objection has been raised to the proposed correction, shall communicate the objection to the other negotiating 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 it is agreed should be corrected.

4.(a) The corrected text replaces the defective text *ab initio*, unless the negotiating States otherwise decide.

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

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the negotiating States.

*Article 27.—The correction of errors in the texts of treaties for which there is a depositary*

[Deleted by the Commission and substance incorporated in article 26]

*Article 25.—Registration and publication of treaties*

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

The following article was adopted by the Commission on 14 July 1966.

*“Article Y.—Cases of State succession and State responsibility*

“The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of States.”

The above article is to be inserted in Part VI, before article Z. The title of Part VI should accordingly be changed to “*Miscellaneous Provisions*”, and the title of article Z to “*Case of an aggressor State*”.