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## **GROUND OF INVALID TREATIES**

- **Municipal law**

A state cannot plead a breach of its constitutional provisions as to the making of treaties as a valid excuse for condemning an agreement. There has been for some years disagreement amongst international lawyers as to whether the failure to abide by a domestic legal limitation by, for example, a head of state in entering into a treaty, will result in rendering the agreement invalid or not. The Convention took the view that in general it would not, but that it could in certain circumstances.

- **Article 46(1) of VCLT 1969** provides that:

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.

Violation will be regarded as manifest if it would be ‘**objectively evident**’ to any state conducting itself in the matter in accordance with normal practice, and in good faith.

- The International Court dealt with this question in *Cameroon v. Nigeria*, where it had been argued by Nigeria that the **Maroua Declaration of 1975** between the two states was not valid as its constitutional rules had not been complied with. The Court noted that the Nigerian head of state had signed the Declaration and that a limitation of his capacity would not be ‘manifest’ unless at least properly publicized. This was especially so since heads of state are deemed to represent their states for the purpose of performing acts relating to the conclusion of treaties. **The Court also noted that ‘there is no general legal obligation for states to keep themselves informed of legislative and constitutional developments in other states which are or may become important for the international relations of these states’.**
- The same was illustrated the **Maritime dispute between Somalia vs. Kenya 2021, ICJ**
- It should, of course, also be noted that a state may not invoke a provision of its internal law as a justification for its failure to carry out an international obligation. This is a general principle of international law and finds its application in the law of treaties by virtue of **article 27 of the 1969 Vienna Convention**.

- **Error**

Unlike the role of mistake in municipal contract law, **the scope of error in international law is very limited**. In practice, given the number of people and the character of states involved in the negotiation and conclusion of treaties, **errors are not very likely to occur**.

**Article 48 of VCLT** declares that a state may only invoke an error in a treaty as invalidating its consent to be bound, 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. The ground is not open to the state if it contributed to the error by its own conduct or the circumstances were such as to put it on notice of a possible error, or if the error related only to the wording of the text of the treaty.

**Temple case Cambodia v. Thailand ICJ Reports, 2002, pp. 303, 430.**

- **Fraud and corruption**

Where a state consents to be bound by a treaty as a result of the fraudulent conduct of another negotiating state, that state may under **Article 49 of the VCT 1969** invoke the fraud as invalidating its consent to be bound. Fraud itself is not defined in the VCT 1969 and since there are no examples of treaties being invalidated as a result of fraud there is a lack of international precedents as to what constitutes fraudulent conduct.

If a state's consent to a treaty has been procured through the corruption of its representative, directly or indirectly by another negotiating state, the former state is entitled to claim that the treaty is invalid under Article 50 of the VCT 1969.

- **Coercion of state representatives**

**Article 51 of the VCT 1969** provides that 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/her shall be without any legal effect. It has long been an accepted rule of customary international law that duress exercised against a representative concluding a treaty has been a ground for invalidating the treaty.

The problem of consent obtained by the application of coercion against the state itself is a slightly different one. Prior to the League of Nations, it was clear that international law did not provide for the invalidation of treaties on the grounds of the use or threat of force by one party against the other and this was a consequence of the lack of rules in customary law prohibiting recourse to war. With the signing of the Covenant of the League in 1919, and the **Kellogg–Briand Pact also called *Pact of Paris* in 1928 forbidding the resort to war to resolve international disputes**, a new approach began to be taken with regard to the illegality of the use of force in international relations.

The problem was noted by Judge Padilla Nervo in the International Court in the **Fisheries Jurisdiction case (United Kingdom v. Iceland 1972)** when he stated that:

There are moral and political pressures which cannot be proved by the so-called documentary evidence, but which are in fact indisputably real and which have, in history, given rise to treaties and conventions claimed to be freely concluded and subjected to the principle of *pacta sunt servanda*.

- **Peremptory Norm of General International Law**

Article 53 of the Convention provides that:

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.

**Article 64 of VCT** declares that ‘[i]f a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates’.

**Article 71 VCT** deals with the specific consequences arising where a treaty conflicts with peremptory Norm. In such a situation the parties to the void treaty are under an obligation to bring their mutual relations into conformity with the peremptory norm.

- **Consequences of invalidity**

**Article 69 of the VCT 1969** provides that where the invalidity of a treaty is established, the treaty is void and its provisions have no legal effect. If acts have been performed in reliance on a void treaty then states may require other parties to establish, as far as possible, the position with regard to their mutual relations that would have existed if the acts had not been performed.

Where a treaty is void under article 53, article 71 provides that the parties are to eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with *jus cogens* and bring their mutual relations into conformity with the peremptory norm. Where a treaty terminates under article 64, the parties are released from any obligation further to perform the treaty, but this 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 the rights, obligations or situations may be maintained thereafter in conformity with the new peremptory norm.

# Termination, suspension of and withdrawal from treaties

## By consent

Articles 54 to 59 of the VCT 1969 provide for various situations where a treaty may be terminated or suspended or where a party may withdraw from a treaty by consent.

The most straightforward situation will arise where the treaty either makes provision for termination, denunciation or withdrawal or where all parties consent to a change.

Where a treaty makes no provision for termination, denunciation or withdrawal then the rule is that withdrawal and denunciation will not be allowed unless it is established that the parties intended to admit its possibility, or a right of termination and denunciation can be implied by the nature of the treaty.

In such a case a party wishing to denounce or withdraw from a treaty should give a ***minimum of 12 months' notice***. The operation of a treaty may be suspended if provided for in the treaty or if all parties consent. In the case of multilateral conventions, two or more parties may conclude an agreement to suspend the treaty as between themselves provided such suspension is not prohibited by the treaty and provided that it is not incompatible with the object and purpose of the treaty. If such an agreement to partially suspend a treaty is concluded there is a duty on the two or more states to inform the other parties to the treaty.

- **A treaty may, of course, come to an end if its purposes and objects have been fulfilled** or if it is clear from its provisions that it is limited in time and the requisite period has elapsed. **The Tribunal in the Rainbow Warrior case 1986** held that the breach of the **New Zealand–France Agreement, 1986**, concerning the two captured French agents that had sunk the vessel in question, had commenced on 22 July 1986 and had run continuously for the three years’ period of confinement of the agents stipulated in the agreement. Accordingly, the period concerned had expired on 22 July 1989, so that France could not be said to be in breach of its international obligations after that date. However, this did not exempt France from responsibility for its previous breaches of its obligations, committed while these obligations were in force. Claims arising out of a previous infringement of a treaty which has since expired acquire an existence independent of that treaty. The termination of a treaty does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

- **Material breach of a treaty**

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Customary law supports the view that something more than a mere breach itself of a term in an agreement would be necessary to give the other party or parties the right to abrogate that agreement.

Where such a breach occurs in a bilateral treaty, then under **article 60(1) of VCT** the **innocent party** may invoke that breach as a ground for terminating the treaty or suspending its operation in whole or in part. The International Court has made clear that it is only a material breach of the treaty itself, by a state party to it, which entitles the other party to rely on it for grounds of termination

There is a rather different situation in the case of a **multilateral treaty** since a number of innocent parties are involved that might not wish the treaty to be denounced by one of them because of a breach by another state. To cover such situations, article 60(2) prescribes that a material breach of a multilateral treaty by one of the parties entitles: the other parties by **unanimous** agreement to suspend 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 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;

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.

- Supervening impossibility of performance
- **Article 61 of the VCT 1969** introduces a rule analogous to the doctrine of frustration in municipal contract law. If a treaty becomes impossible to perform as a result of the permanent disappearance or destruction of an object indispensable for the execution of the treaty, that impossibility may be invoked as a reason for terminating or suspending the treaty. Where the impossibility is only temporary, it may only be invoked as a ground for suspension of the treaty. An example of the operation of Article 61 would be the case of a treaty governing rights pertaining to a river. The treaty could be terminated if the river dried up permanently. The impossibility of performance cannot be invoked by a party, where the impossibility results from the conduct of that party.
- Linked to impossibility of performance is the doctrine of **force majeure**. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty as per article 61 of VCT.

- **Other possible grounds**

**Article 63 of the VCT 1969** provides that severance of diplomatic relations will not in itself affect treaty relationships, unless of course it amounts to a fundamental change of circumstances. There are a number of views as to the effect on a treaty of the outbreak of war. The VCT 1969 contains no provision relating to war, and it is certain that treaties governing war and peace, for example the UN Charter and the Geneva Conventions 1949 are not terminated or suspended by war.

- The International Court in the **Fisheries Jurisdiction case** declared that:

“...International law admits that a fundamental change in the circumstances which determined the parties to accept a treaty, if it has resulted in a radical transformation of the extent of the obligations imposed by it, may, under certain conditions, afford the party affected a ground for invoking the termination or suspension of the treaty....”

**Treaties between states and international organizations. Every one should Carry out his/her own Studies.**



**THANK YOU**