TREATIES AS SOURCE OF INTERNATIONAL LAW

With explanation of principle of pacta sunt servanda

Submitted to
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ABSTRACT

International law is a dynamic law. It has been changing since its inception, in last four decades changes have been so radical and tremendous that were not witnessed in the last four centuries. The process of change has resulted in the reconstruction and development of international law, and at the same, has created many faceted problems because of the demand of further changes. The most significant change that has taken place is the emergence of a number of territories, which hitherto were colonies, into independent states. However, international law still favours the power rather than the number. For instance although a number of states have attained political independence they are fighting for their economic rights and equality. They therefore had made a call for a New International Economic Order (NIEO). At present it has acquired most pressing challenge ‘number’. There are different sources of international law. For instance Custom, Treaties, Judicial decisions, Writings of jurists, Equity, Resolution of the General Assembly. My project deals with one of the source of international law i.e. treaties. The term treaty means a written agreement by which two or more states or international organizations create a relation between themselves operating within the sphere of international law.

Parties to a treaty- article 6 ‘every state possesses capacity to conclude treaties’.

There are various principles that of treaties. A force that keeps the states obligation bound is under the umbrella of a principle i.e. ‘Pacta Sunt Servanda’. Other principles such as Jus Cogens, Pacta Tertis NEC Nocent NEC Prosunt. The treaties could also be terminated or invalidated in few instances but few steps are to be followed before a treaty gets binding on the states. There are constitutional requirements that have to be fulfilled. There are various methods of interpreting treaties such as grammatical method, functional method etc. Amendments could also be done to the treaties. Also various modes of expressing consent are used by the states for a treaty into which they had entered by following different steps. So lets start our journey towards knowing more in detail about treaties.
THE FORMALITIES OF A TREATY

Article 2 (1) (a) of the Vienna Convention on the Law of Treaties defines a treaty for the purpose of the convention, as:

‘.............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.’

To qualify as a treaty therefore, the agreement must satisfy the following criteria: it should be a written instrument or instruments between two or more be governed by international law; and should be intended to create legal obligations.

A written instrument between two or more parties

Although the Vienna Convention does not apply to international agreements which are not made in writing, article 3 of the Convention expressly states that the legal force of such non-written agreements shall not be affected by that fact.

Article 3 of the Vienna Convention provides ‘The fact that the present Conventions does not apply to international agreements concluded between states and 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 independently of the convention;
c) The application of the convention to the relations of states between themselves under international agreements to which other subjects of international law are also provided.’

NOTE- however, that Article 102 of the Charter of the United Nations provides:

‘1. Every treaty and every international agreement entered into by a member of the United Nations after the present charter comes into force shall as soon as possible be registered with the secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this article may invoke that treaty or agreement before any organ of the United Nations’.

This requirement of registration and publication would seem to exclude verbal agreements from the status of ‘treaty’ as the term is understood and applied by the charter of the United Nations with particular reference to the international court of justice, the principal judicial organ of the united nation.
A treaty must be between parties endowed with international personality
The Vienna convention applies only to those international agreements concluded between states. Other subjects of international law such as international organisations are therefore excluded. The reason for limiting the convention to treaties entered into between states was the fear that if other agreements were included, the differing rules of international law applicable to such agreements would make the convention too complicated and delay its drafting.
But again article 3 of the Vienna convention provides that notwithstanding the exclusion of such ‘international agreements concluded between states and other subjects of international agreements concluded between states and other subjects of ‘international law’ from the convention, this does not affect ‘the legal force of such agreements’.
Article 3 of the Vienna convention therefore recognises that under customary international law entities other than states may have the requisite international personality allowing them to make treaties. ¹

States
Article 6 of the Vienna convention provides: ‘every state possesses capacity to conclude treaties.’
In this respect the convention reflects customary international law. According to the international law commission commentary, the term ‘state’ is used in article 6:

‘........with the same meaning as in the Charter of the United Nations, the statute of the court the [Vienna] Convention on diplomatic relations, i.e. it means a state for the purpose of international law.’

Federal states and colonial and similar territories are not within the conventions, but nevertheless they may have treaty-making powers.

Federal States
The draft articles of the international law commission include the following paragraph, omitted from the Vienna convention, regarding federal states: ‘states members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal state constitution and within the limits there laid down.’
An example of a federal state in which component states have the power to make treaties is the federal republic of Germany.
Article 32(3) of the German constitution provides: ‘in so far as the Lande have power with Austria and Switzerland to the convention for the protection of Lake Constance against pollution 1960.

Colonial and other non - self governing territories
Some non – self governing territories and colonial territories have been recognised as having capacity to conclude treaties. For example- Canada, Australia, New Zealand, Africa and India

¹ Wallace M.M. Rebecca; International law; pg 221
were invited to take part in the 1919 Paris Peace Conference and become parties to the treaty of Versailles.

**International organisations**

The power of international organisations to enter into a treaty can arise in two ways:

*By express grant contained in the constitution of the organisation.* For example, article 57 and 63 of the charter of the United Nations give the United Nations power to enter into relationship agreements with the various specialised agencies.

Article 43 of the charter empowers the United Nations to enter into agreements with member states on the provision of military contingents

*By implication, in order to carry out the duties imposed by the constitution upon the organisation.* For example in the advisory opinion on reparations for injuries suffered in the service of the United Nations case (1949) ICJ rep 174, it was stated:

‘.....under international law the organisation must be deemed to have those powers which, though not expressly provided for in the charter are conferred by necessary implication as being essential to the performance of their duty.’

**Limitations on the implied powers**

The existence of an implied treaty making power does not mean that an organisation can conclude any sort of agreement. An organisation cannot act in total disregard of the limitations placed upon it in its constitution. Its treaty – making capacity must be compatible with the letter and spirit of its constitution. As Hackworth j stated in *Reparations for injuries suffered in the series of the United Nations case*:

‘.........powers not expressed cannot freely be implied powers flow from a grant of express powers and are limited to those that are ‘necessary’ to the exercise of powers expressly granted’

If the organisation did exceed its implied powers the act would be ineffective and the treaty void.

**Individuals or corporations created under municipal law**

Individuals and corporations have never been recognised as having the capacity to make treaties, whether with states, other individuals or with other international persons with treaty-making capacity. It is possible for a state to enter into a contract with an individual or a corporation, but such an agreement will not have the status of a treaty under international law.

In the *Anglo-Iranian oil company case* the UK alleged that the 1933 concessionary between the Iranian government and the Anglo-Iranian Oil Company was in the nature of an international agreement. The UK argument was founded upon the fact that the concession had

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2 (1949) ICJ Report 174
3 (1952) ICJ Report 93
been negotiated in order to settle a dispute between UK had Iran which had been before the council of the league of nation and therefore UK played a part in its negotiation although it was not itself a party to the actual final agreement.

**Held**-The court held that the background against which the agreement was negotiated could not give the concession the international character suggested by the UK. The UK was not a party. It was therefore nothing more than a concessionary contract between a government and a foreign corporation.

**The agreement must be governed by international law**

The requirement that an agreement must be governed by international law represents a significant innovation compared to the position under customary international law. Under customary international law, international courts and commissions do not have jurisdiction over all cases concerning claims that a treaty is invalid, but only over those cases where the parties agree to submit the matter to such a court or commission.

Simply because two entities endowed with international personality and possessing treaty making capacity enter into an agreement, it does not follow that the agreement can be subject to municipal law, either expressly or by implication.

For example, during the period 1966 to 1968 Denmark entered into a series of loan agreements with other states(e.g. Malawi) which stipulated that, except as otherwise provided therein, ‘the agreement and all rights and obligations deriving from it shall be governed by Danish law’.

There would seem to be no reason why an agreement must be governed exclusively by either international law or by municipal law. many agreements between states are of a hybrid nature and as such are binding on the international plane as well as being directly governed by municipal law.

The International Law Commission Fourth Special Rapporteur stated in his first report (1962):

‘...............the commission felt in 1959 that the element of subjection to international law is so essential a part of international agreement that it should be expressly mentioned in the definition. There may be agreements between states, such as agreements for the acquisition of premises for diplomatic missions or for some purely commercial transaction, the incidents of which are regulated by the local law of one of the parties or by a private law system determined by reference to conflict of law principles. Whether in such cases the two states are intentionally accountable to each other at all may be a nice question; but even if that were held to be so, it would not follow that the basis of their international accountability was a treaty obligation. At any rate, the commission was clear that it ought to confine the notion of an ‘international agreement’ for the purposes of the law of the treaties to one, the whole formation and execution of which(as well as the obligation to execute) is governed by international law’: Sir Humphrey Waldock (1962) 2 yearbook of the international law commission 32.
The agreement should create a legal obligation

The intention to create legal relations is not mentioned in the vienna convention. The international law commission’s rapporteur stated that ‘in so far as this [requirement ] may be relevant in any case, the element of the intention is embraced in the phrase’ governed by international law.’”

There are however practical reasons for excluding any specific reference to intention. States may wish to reach an agreement as to political intent without going to the extent of making it legally enforceable. Therefore, what may appear to be a treaty may in fact be devoid of any legal content. This is particularly true of the so called ‘joint declaration’ by states, examples being the Atlantic Treaty of1941 and the Cairo Declaration of 1943. Such declarations are statements of ‘common principles’ or ‘common purpose’ imposing no legal obligations upon the parties to pursue those policies.

Similarly, the final act of the Helsinki Conference in on Security and Co-operation in Europe 1975 was stated to be: ‘not eligible for registration under art 102 of the Charter of the united nations and the general understanding expressed at the conference was that act would not be binding in law.

However, such agreements, even if not creating rights and obligations directly, may provide the basis for new rights and obligations in the future. So that today, for instance ,it is of little practical significance that the United Declaration of Human Rights adopted by the General Assembly in 1948 was agreed to by member states only on the understanding that it did not create binding obligations upon them.

Unilateral acts

Acts and conduct by government, although not intended to formulate agreements may

Unilateral declarations

A state may accept obligations vis-a-vis pther states by the making of a public declaration expressing a clear intention on its behalf.

In the Legal status of eastern Greenland case: Norway v Denmark⁴ the Danish government notified the Norwegian government through the Danish minister in Norway’s claim to Spitzbergen. The intention was to obtain a reciprocal undertaking from the Norwegian government with respect to Denmark’s claim to Greenland. The Danish government stated that it was ‘confident’ that the Norwegian government ‘would not make any difficulties in the effect that his government would make no such difficulties. The court held that even if this declaration by the foreign minister could not be considered as recognition of Denmark’s to Greenland, it nevertheless created an obligation binding upon Norway to refrain from contrstring Danish sovereignty over Greenland.

⁴ (1933) PCIJ Rep Ser A/B 53
The court stated:

‘...............the court it beyond all dispute that a reply of this nature given by the Minister if Foreign Affairs on behalf of his government in response to a 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.

**Judicial nature of declarations**

The judicial nature of unilateral declarations was considered by the ICJ in the *Nuclear Tests Cases: Australia v France ;New Zealand v France*.5

Australia and New Zealand had sought a decision of the court that the French testing of nuclear weapons in the atmosphere was contrary to international law. The French government refused to comply with the court’s interim order requiring it to refrain from commencing the tests until the court reached a decision in the case.

However, in a series of public pronouncement, members of the French government had stated that France was going to commence underground testing in the following year and at a process press conference the president of the republic stated that he had achieved their objective and therefore the dispute between the parties no longer existed. The court said it had ‘no doubt’ that declarations made by unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations.

**The criteria for such an obligation are**

1) The criteria of the state making the declaration that it should be bound according to its terms; and

2) That the undertaking be given publicly. ‘No subsequent acceptance of the declaration, nor even any reply or reaction from other states, is required for the declaration to take effect.’

When, as in the *Nuclear Tests Cases*, the declaration is not directed to a specific state or states but is merely expressed generally the question as to whether there is an intention to be legally bound will require very careful consideration.

In the *North Sea Continental Shelf Cases (1969)*6 states that the unilateral assumption of the obligations of a convention by the conduct was ‘not lightly to be presumed’ and that ‘a very consistent course of conduct’ was required in such cases.

**The ‘Old’ and ‘New’ Law**

Traditionally law upheld the principal of states freedom in the field of treaty making. Under strong pressure from socialist and third world country momentous changes were introduced and, to a large extent codified in the 1969n vienna conventions on the law of treaties, entered

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5 (1974) ICJ Rep 253,457
6 (1969) ICJ Rep 3
into force on 1980two observations are opposite here, one concerning the formal aspects of the law enacted through the convention the other regarding the political ideological concept underlying it. As for the status of the convention, most of its provisions either codified customary law or have given rise to rules belonging to the corpus of general law, consequently those which do not will retain their status of treaty stipulation as long as they do not turn into customary rules. It follows that ,for the time being the convention as a whole does not yet constitute general international law. nevertheless, it seems most likely that, as the old law withers away, the new one destine gradually to replace it will evolve along the lines set forth in the convention. This instrument is therefore endowed with great significance, even in those areas where it only appears to be potential customary law. Let us now consider political or ideological philosophy underline the main innovation of the convention. Three principles inspires the bulk of the text:

1) It introduces restrictions on the previously unfettered freedom of states. States are no longer free to do whatever they wish but must respect a central core of inrenational values from which no country however great it is economic and military strength, may deviate (articles 53 and 64), on jus cogens,;c6.5).

2) There is a democratisation of international legal relations. While the previous only oligarchic structure allowed Great Power formally to impose treatise upon lesser States, this is no longer permitted; coercion on a State to induce it to enter into an agreement is no longer allowed(see article 52 and the Declarations on the Prohibition of Military, political or economic coercion in the conclusion of treatise, annexed to the convention). Moreover all States can now participate in treatise without being hampered by the fact that a few contracting parties can exercise a ‘right’ of veto, (see article 19-23 on reservations).

3) The conventions enhance international value as opposed to national claims. Thus the interpretation of treaties must now emphasize their potential rather than give pride of place to ‘states’ sovereignty (see article 31 on interpretation).it should be emphasized however, that the ‘new’ law has not completely superseded the ‘old’. First of all the convention itself laid down in article 4 that ‘it applies only to treaties concluded by States only after the entry into force of the present convention with regard to such States’ it follows that treaties made before that date are still governed by the ‘old’ law. second, not all members of the world community have become parties to the convention. Consequently treaties made by countries that are not parties ( all treaties made before the convention’s entry into force) are only governed by the convention to the extent that it is declaratory of, or has turned into, customary.


Treaties being essentially written agreements between states have had a prominent place in international relations since long before international law in the modern sense of the term was in existence the customary rules of international law relating to treaties gradually acquired treaties considerable certainty and precision. Nevertheless the very great importance of
treaties in international relations and the certainty or unsatisfactoriness of some aspects of customary law made the law of treaties a suitable subject for consideration by the international law commission. In 1966, the commission adopted its final report on the law of treaties, containing a set of draft articles and commentaries upon them. These served as the basic proposal before a conference, attended by representatives of over 100 states, which was held in Vienna in two sessions, in 1968 and 1969, and adopted the Vienna convention on the law of treaties. The conventions entered into force on 27 January 1980.

In 1986 a further conventions was concluded, also in Vienna and also on the basis of preparatory work by the international law commission, on the law of treaties between states and international organisations or between international organisations. This convention has the broad effect of applying to international agreements between such parties the designation of ‘treaties’, and extending to them substantially the same rules, *mutatis mutandis*, as apply to treaties between states under the Vienna Convention of 1969. Accordingly, it is that convention whose provisions will principally be considered, particularly be considered, particularly since the 1986 convention may not enter into force for some time yet.

The Vienna Convention of 1969 deals with the greater part of the law of treaties. The customary law of treaties is nevertheless still relevant for questions not regulated by the provisions of the Vienna conventions; for international agreements not within the scope of the convention; for treaties concluded by states before the entry into force of the convention with regard to such states; and for treaties involving states not parties to the convention. One further general limitation upon the application of the convention which should be noted concerns treaties which are constituent instruments of, or which are adopted within, international organisations; the convention applies to such treaties without prejudice to any relevant rules of the organisation.⁷

### Kinds and Classes of Treaties

The fact that only parties to treaties are bound by them has given rise to a debate about whether treaties create law or whether they impose obligations which the law says must be carried out. The debate is often expressed in terms of a distinction between ‘contract treaties’ and ‘law making treaties’. Typically bilateral treaties are said to be the examples of the former, and multilateral treaties examples of the latter. However since we have the rule that all treaties whether multilateral or bilateral only bind the parties to them, this is an unhelpful distinction. Rather the issue is whether all treaties are ‘contracts’ and impose obligations, or all treaties are ‘law making and create international law.

### The treaty as a source of law

The reason why treaties are described as a source of obligation rather than as a source of law is in an attempt to explain why treaties are binding. Allegedly, the answer is that customary law says they are. Yet even if this is true, this is not a complete or convincing answer because we are still faced with the same problem namely ‘where is the legal authority for the

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⁷ Oppenheim; international law; pg1210
customary rule that says that treaties are binding”? Indeed to regard treaties are purely as a source of law obligation conceals the vital function they perform in the system of international law. they are the only method by which states can consciously create binding law and they are routinely used for that very purpose. If a state bound by the terms of treaty it is legally bound to act in a certain way and in a practical sense it has created law for itself. In fact given that the purpose of all treaties is to govern the future conduct of the parties, it is difficult to see why they cannot be regarded as creating law for those purpose.

Kinds of treaties

1) *Bilateral treaties* – they are bipartite contracts. The participation, obligations and rights are limited only for two parties.
2) *Plurilateral treaties* – here the participation is limited states but more than two.
3) *Multilateral treaties* – such type of treaty is open to participation for all states without restriction.

Classes of treaties

*McNair has classified treaties under the following categories*

1) Treaties having the character of conveyances
2) Treaty contracts
3) Law making treaties
4) Other treaties such as the treaty of universal postal union

*Oppenheim has classified treaties into two categories:*

1) *Law-making treaties* - Law making treaties form a source of international law. Law making treaties may be of two kinds:
   a) When all members of family nations are parties to law making treaty, the treaty give rise to universal international law.
   b) When only some members are parties to a law making treaty, it give rise to a particular international law.

2) *Non –law making treaties*

*Treaties are made for numerous purposes and may be classified on different principles. They may be classified:*

1) As intended to, or merely declaratory of, international law.
2) As ‘personal’ or ‘real’ the former depending upon the continuance of the dynasty which makes them, the latter on the object aimed at.
3) The transitory and treaties proper,\(^8\)

*Lastly treaties are classified according to their objects:*

\(^8\) Menon ; international law; 233
i. Political- including treaties of peace, boundary, alliance, recognition, neutralisation, guarantee, or for submission of a special controversy to arbitration

ii. Commercial- including treaties of navigation, treaties as to fisheries and consular conventions.

iii. Social – for example, Union for promoting the general convenience of nations; the Latin monetary union (1865) ; and the wider unions for international systems of weights and measures (1875) ; for postage (1874) ; for customs, tariffs and communication (1890) and many others.

iv. Relating to civil justice- such are conventions concerning copyrights (1886) ; patents and trade works (1880) ; and the Hague convention on the conflict of laws

v. Relating to criminal justice- such are treaties as to extradition and as to fugitive seamen.

vi. Promulgating written rules of international law upon topics previously governed, if it all, only by written custom. For example, rules of international law as to the peaceful settlement of international disputes and to the conduct of warfare.

The Making of Treaties
Following are the main steps in the main steps in the formation of treaties-

1) Accrediting of persons on behalf of contracting parties-the first step in the formation of treaty is the accrediting of persons on behalf of the contracting parties. States authorise some representatives to represent them for the negotiation, adoption and signature, etc of a treaty. Unless these representatives are accredited or authorised, they cannot participate in the conference.

2) Negotiation and adoption- the accredited persons of contracting parties enter into negotiation for the adoption of the treaty. After the matters are settled, the treaty is adopted.

3) Signatures- after negotiation, next important step is the signature of the accredited representatives of the contracting parties. The authorised representatives of the state parties sign the treaty on behalf of their states. It may however, be noted that the treaty does not become binding until it is ratified by the respective states.

4) Ratification- ratification is very important step in the formation of a treaty. Ordinarily , unless and until a treaty is ratified it does not bind the states concerned. By ratification we mean that the head of the state or the state government by confirming to the provisions of the constitution confirms or approves the signature made by their authorised representatives on the treaty. The state parties become bound by the treaty after ratification.

Reason why ratification must be required

   a) Historically the subsequent ratification by the sovereign prevented diplomats from exceeding their instructions and confirmed the power of the representative to negotiate the treaty.
b) The delay between signature and ratification allows the sovereign time to reconsider the matter and follows time for expression of public opinion on the matter.

c) Consent of the legislature may be required for ratification in accordance with the state municipal law.

5) Accession or adhesion - the practice of the states shows that those states which have not signed the treaties may also accept it later on. This is called accession. Accession may occur before or after the treaty has come into force. It has the same effect as signature and ratification combined. A state may be willing to accept most provision of a treaty, but it may, for various reasons, wish to object to other provisions of the treaty. A treaty becomes a law only after it has been ratified by the prescribed number of state parties. Even after the prescribed numbers of state parties have signed, the other states may also accept or adhere to that treaty. This is called adhesion.

6) Entry into force - the entry into force depends upon the provisions of the treaty. Some treaties enter into force immediately after the signature. But the treaty in which ratification is necessary enter into force only after they have been ratified by the prescribed number of state parties. Thus treaty become binding law only among the states which signed and ratified. It is a fundamental principle of international law that only parties to a treaty are bound by the treaty. That is often expressed by the maxim ‘pacta tertijs nec nocent nec prosunt.

7) Registration and publication - after a treaty comes into force its registration and publication are also ordinarily considered essential. Article 102 of the united nations charter provides that the registration and publication of every international treaty entered into by the members is essential. it is made clear in this article that if an international treaty or agreement is not registered, it cannot be invoked before any organ of the united nations. Thus international treaties or agreements should be got registered and published. This provision, however, does not mean that if the treaty is not registered and published. This provision, however does not mean that if the treaty is not registered and published it will not come into force or become invalid. In fact art. 102 means that if treaty is not registered in the united nations, it cannot be invoked before any organ of the united nations. The object of art. 102 was to prevent the practice of secret agreements between states, and to make it possible for the people of democratic states to repudiate such treaties when publicly disclosed.

8) Application and enforcement - the last step of the formation of treaty is its application and enforcement. After a treaty is ratified, published and registered, it is applied and enforced.\(^9\)

Reservation – a reservation is defined in art 2(1) of the Vienna convention laws. The effect of such reservation depends upon whether it is accepted or rejected by the other states concerned. The traditional view was that reservation were valid if the treaty

\(^9\) Kapoor S.K.; International law; 474
concerned permitted reservation and if all the other parties to the treaty accepted the reservation.

*Limitations of traditional approach*- in the case of bilateral treaty involving few parties no real difficulty arose in deciding whether a reservation had been accepted by the other party. However the increasing number of multilateral treaties made the situation more complicated and particularly with regard to those conventions drafted through the auspices of the United Nations it was apperant that this approach would have to change.

*Present approach*-It includes
  o Permissible and impermissible reservations
  o Freedom to formulate reservation
  o Acceptance of and objection to reservations other than those expressly authorised by treaties
  o Interpretative declarations
  o Article 19-21 of the Vienna convention follow the principles laid down by the court in the *Genocide case* but do, however make some concessions to the trditional rule by recognising that every reservation is incompatible with certain types of treaty unless accepted unanimously.

**Various modes by which a state may express its consent to be bound by a treaty**

1) **By signature**- the consent of a state to be bound by a treaty is expressed by the signature of its respective when:
   a) the treaty provides that the signature shall have that effect;
   b) it is otherwise established that the negotiations states were agreed that signatures should have that effect;
   c) the intention of the state to give that effect to the signature appears from the full power of its representative or was expressed during the negotiation.

2) **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;
   b) it is otherwise established that those states were agreed that the exchange of instruments should have that effect.

3) **By ratification, acceptance or approval**- the consent of a state to be bound is expressed by ratification when
   a) the treaty so 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;
   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. The
consent of a state to be bound by a treaty is expresses by acceptance or approval under conditions similar to those which apply to ratification.

**NEWS REPORT**

The new Russian-American START Treaty has officially come into force. Russian Foreign Minister Sergei Lavrov and U.S. Secretary of State Hillary Clinton exchanged instruments of ratification on the sidelines of the Munich security conference on Saturday.

The treaty was signed by Russian and U.S. presidents Dmitry Medvedev and Barack Obama in April 2010 in Prague. As Lavrov underscored at the ceremony, the treaty enters force in exactly the form in which it was signed by the two presidents. According to him, the document meets the national interests of both Russia and the U.S.

In turn, Hillary Clinton said that within 45 days the parties will exchange full information on weapons, and in 60 days inspections will resume, which will allow each party to "trust but verify."

4) **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 means of accession
   c) All the parties have subsequently agreed that consent may be expressed by that state by means of accession.

5) By any other means if so agreed- in addition to the above means, the consent of a state to be bound by a treaty may also be expressed by any other means if so agreed. But such consent will be effective only if it is made clear to which of the provisions the consent relates.

It is also notable that article 18 of the Vienna convention, 1969 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.

**Effect of Treaties**

- **Bind Parties** – the effect of an international contract or treaty is to bind parties to carry out its stipulation for
  
  (i) a fixed period or time
(ii) until the object of the treaty are achieved or
(iii) indefinitely if its object is the infinite repetition of certain acts, or
(iv) The setting up once for all of a permanent state of things.

All parts of treaties should be treated with equal importance and good faith, except in the case of multipartite treaty where some states make a reservation that articles in the treaty are not binding on them.¹⁰

- **Auxiliary legislation** – An international treaty is concluded only between states. It is binding only on such states and not on subjects of those states. If it creates or relates to, right or obligations on the subjects of a state, courts, officials and municipal laws of such states should take necessary steps such as the passing of appropriate laws by the Parliament of such states. To give complete effect to such a treaty, auxiliary legislation may become necessary.

- **Commercial Treaties** – Commercial treaties which have the effect of altering the existing laws of trade and navigation of parties may need for their execution the sanction of the state legislature. Thus the commercial treaty of Utrecht between France and Great Britain which placed the trade between them on a basis of reciprocity was rejected by the British Parliament as it refused to pass a bill brought in to modify the trade and navigation. As a matter of international law, if the treaty-making department of a state concludes a treaty by which certain things are agreed to be performed, then that state is bound to perform them. It is no answer to other nation that the breach of treaty is caused by the failure of a department of the government to confirm to the treaty. Each department of a government must discharge its appropriate functions towards the performance of whatever the nation has bound itself to do.

- **Change in Government** – No change in the head of government or in the form of government of a state affects the binding character of a treaty. For example a change in the ministry or head of a state or a change from monarchy to a republic does not affect its binding force as between the two states. But in the case of a revolutionary change, a confirmation of the treaty may be necessary.

**How third parties are affected** - Generally a treaty binds only states that are parties to it. Third parties acquire neither right nor incur liabilities. But in certain circumstances it may produce results on third parties, for example in the case of commercial treaties granting more concessions to a state than it had hitherto enjoyed, so as to affect or reduce the privileges enjoyed by third state under a prior contract made with it by one of the pre-contracting parties. Sometimes treaties are entered into between two states so as to confer some rights on a third state.

**How performance of treaties are secured:**- oaths, hostages, pledges, occupation of territory, guarantee and the means of enforcements by international action are the methods employed in securing the performance of treaties.

- **Oaths** – It was employed from very ancient times. In the sixteenth and seventeenth centuries, ceased to exist. The last instance of it was a treaty of alliance between France and Switzerland in the Cathedral of Solothurn by oath in

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¹⁰ Menon; international law; pg253
1777. In a treaty of the sixteenth century, we find the parties promising observance “by the indivisible Trinity by all divine things, and the dreadful day of judgement.”

b) **Hostages** – this practice also fell into disuse, the last of such instances was when England sent Lord Sussex and Lord Cathcart as hostages to France to secure the return of Cape Breton island to France in the Peace Treaty of Aix-la-chapelle in 1748.

c) **Pledge** – sometimes movables are pledged for securing the performance of a treaty, as Poland has pledged her crown jewels to Prussia. This also has become absolute.

d) **Guarantee** – other states or states, not parties or parties to the treaty promise that everything possible would be done to compel the contracting party to observe the treaty and execute it completely.

**Parties to treaties**

**Treaty making capacity of states**- every state possesses treaty-making capacity. However, possesses this capacity only when it is sovereign. States which are not fully sovereign can become parties only to such treaties as they are competent to conclude. No hard and fast rule defines the competence of less than fully sovereign states: everything depends upon the special case. The constitution of the federal states may contain on the competence, if any, of the members states to conclude international treaties with foreign states, and on the extent which they do so in their own right or on behalf of the federal state. Similarly protected states may conclude treaties if so authorised by protected states or the treaty establishing protectorate. In some cases territories or territorial unions which are not fully sovereign states have been admitted to some international organisations, thus recognising in them a measure of treaty making power. On the occasion a dependent territory, such as colony, may conclude a bilateral treaty with a foreign state; but this will normally only be with the express consent of the parent state, given either ad hoc or generally for particular categories of treaties, covering of treaties, covering matters of particular interest to the territory. In such a case the territory is probably to be regarded as not exercising a treaty-making power in its own right but as exercising as delegate the treaty making power of the parent state which remains ultimately responsible in international law. Difficult questions often arise over whether an agreement conclude with non recognised communities constitute treaties particularly those negotiated as part of the process by which they achieve independence. Particular mention may be made of the problems which if there are deep differences over the recognition of entities as state can arise over the implementation of signature of accession clauses of multilateral treaties which are cast in terms applying to all stages. These problems are now usually in practice avoided by a formula opening signature or accession to states which are members of the United Nations or a specialised agencies or by having for the treaty more than one depositary.

An instrument as void as a treaty if concluded in disregard of the international limitation of the capacity of the parties to conclude treaties. It may sometimes not easy to determine
whether a treaty actually restricts a state capacity to conclude subsequent treaties or whether it may imposes obligations with which its subsequent treaties must not conflict. In the former case **commission v council** 11 a treaty purportedly concluded in access of capacity will be void. While in the latter the matter the matter is more likely to be seen as the international responsibility.

**Held** - The court of justice of European communities has held that in certain circumstances the member states have cease to have any right to conclude treaties with third countries, The European Economic Community alone having right to do so in those circumstances.

**Treaty making capacity of international organisation** - the capacity of international organisation to conclude international agreement is now beyond doubt where such capacity is expressly provided in there constitutive instruments or where it is indispensible for the fulfilment of the purposes and functions for which they were setup many international organisation have concluded international agreement s with member states, with states which are not member states, and with other international organisations.12

Although international agreements concluded between state and international organisations or between international organisations are not dealt with by the venna convention on the law of treaties 1969. This does not effect the legal force of such agreements or the application to them or any of the rules set forth in the convention, to which they would be subject under international law independently of the convention. By and large it was believed that the law governing treaties between states applied, mutatis, mutandis, to agreements concluded by an international organisations, although certain special characteristics of such agreements would have to taken onto account. A resolution adopted by the vienna conferences recommended that the general assembly to the international organisation the study of the question of such agreements. This the assembly did in 1969, and in 1982 the commission completed its work on the matter and submitted its final draft articles for a convention to the assembly. This draft articles formed the basis for the convention on the law of treaties between states and international organisations or between international organisations which was adopted in 1986 as the conclusions of a conference in vienna. In effect the 1986 convention applies to the treaties with which it deals the same rules as those laid down by the 1969 convention for treaties between states, with such adaptations as are necessary because of the characteristics of international organisations.

**Interpretation of treaties**

**Grammatical Interpretation** - In **mogul case** the permanent court of international justice said that in the first place, the intention of the parties should be ascertained from the wording of the treaty. If in a treaty, two or more languages are authentic, and a term as customarily applied in one language have a wider meaning than employed in another language difficulties may arise. This a case the court laid down the rule that “where two versions possessing equal authority exist one of which appears to have a wider bearing than the other than it is bound to

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11 (1971)
12 Oppenheim; international law; pg 1218
adopt more and which, as far as it goes, is doubtless in accordance with the common intention of the parties.

**Systematic interpretation**- the understanding of the primary meaning of a treaty is the purpose of grammatical interpretation. This has to be supplemented by a systematically interpretation. The permanent court of international justice in its advisory opinion on the polish postal service in Danzig (1925), held that “it is a cardinal principle of interpretation that the words must be interpreted in the sense which they would normally have in their context unless such interpretation would lead to something unreasonable or absurd.”

**Logical interpretation**- the parties must be taken to have meant to constitute the treaty as a logical whole, harmoniously and consistently to avoid inconsistency and self-contradictions.

  a) Restrictive and exclusive interpretation
  b) General and special obligations

**Historical interpretation**- Reference to proceedings such as negotiations and drafts before the making of a treaty is forbidden by the permanent court of international justice, if the wording of the treaty is sufficient in itself. But if the intentions of the parties are not clear from the grammatical systematical or logical interpretation of the treaty, the permanent court of international justice has made use of the historical interpretation. In the lighthouse case (1934) it was held that when the context does not suffice to show the precise sense in which the parties to the dispute have employed these words in their special agreement the court, in accordance with its practice, has to consult the documents preparatory to the special agreement in order to satisfy itself as a true intention of the parties.

**Functional interpretation** – the interpretation with reference to the function which, in the intention of the contracting parties, a treaty is to serve, is called the functional interpretation. The object of functional interpretation is to fulfil the aims and functions intended by parties that a treaty should fulfil. Various techniques have been employed to understand the functions fulfilled by treaties as it has enquired into their position within the system of customary international law to interpret the treaties in their light. The court also interprets a treaty by reference to other corresponding treaties

**Conventional interpretation**- the contracting parties may themselves have attached a particular meaning to the terms of a treaty either impliedly by a long course of conduct or by express agreement.

**Interpretation of treaties by municipal courts**- municipal courts have the right to interpret treaties, but as between the contracting states, that interpretation is not conclusive. An aggrieved can make protest or make representations through the diplomatic channel. That interpretation does not prevent parties from placing by agreement their disputes before an international court or tribunal. No party state can seek the aid of its municipal law to nullify, alter or amend the plain language of a treaty. A treaty must be

  a) Construed as a whole
b) Expressio unius est exclusion alteris- when general words follow special words, the meaning of the former must be more limited within the narrowness tahn they might if they stand alone.

c) Treaties should receive liberal interpretation.

d) Reality rather than appearance is to be regarded

**General Principles of Law of Treaties**

Following are the three important maxims relating to the law of treaties

1) **Pacta sunt servanda** – it is the basis of the binding force of the international treaties. There is a great controversy amongst the jurists in regard to the binding force of international treaty. In the view of Italian jurist, Anzilotti, the binding force of international treaty is on account of the fundamental principle known as Pacta Sunt Servanda. According to this principle, states are bound to fulfil in good faith the obligations assumed by them under treaties. In this connection Prof. Oppenheim has remarked, “the question why international treaties have binding force always was and is still much disputed. Many writers find the binding force of treaties in the law of the nature, others in religious and moral principles; others again in the self-restraint exercised by states in becoming a party to the treaty. Some assert that it is a will of the contracting parties which gives binding force to their treaties. The correct answer is probably that the treaties are legally binding because there exists a customary rule of international law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption which is neither consensual nor necessarily legal, of the objective binding force of international law. this assumption is frequently expressed by the form of principle, pacta sunt servanda. “the norm pacta sunt servanda which constituted since times immemorial the axiom postulate and categorical imperative of the science of international law and thus has very rarely been denied on principle, is undoubtedly a positive norm of international law.” Few rules for the ordinary society have such a deep moral and religious influence as the principle of the sanctity of contracts: pacta sunt servanda”. “The principle of sanctity of contracts is an essential condition of life of any social community. The life of international community is based not only on relations between states but also to an ever-increasing degree of relations between states and foreign corporations or foreign individuals. No economic relations between states and foreign corporations can exist without the principle of pacta sunt servanda.”

In his dissenting opinion in 1958 case concerning the application of the convention of 1902 governing the guardianship of infants (**Netherland v Sweden**) the maxican judge Cardova of the international court of justice referred the rule as “a time honoured and basic principle.” In its advisory opinion in 1922 on the designation of workers delegated to the international labour conference, the permanent court of international justice emphasised that the contractual obligation was not merely “moral obligation”, but was “an obligation by which, in law, the parties are bound to one another.” Later on the international court of justice in its advisory opinion of 1951 on
the reservation to the Genocide Convention stated that, “none of the contracting parties is entitled to frustrate or impair by means of unilateral decisions or particular agreements, the object and raison de etre of the convention.”

Thus “perhaps the most fundamental principle of international law and surely the basic principle of treaties is pacta sunt servanda.” The principle of pacta sunt servanda also has been incorporated in the Vienna Convention on the law of treaties, 1969. Preamble of Vienna Convention notes that the principle of pacta sunt servanda rule is universally recognised Article 26 of the said convention provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith. But “it means nothing more than that he basis for the validity of international agreements are binding, and it may seem as if little had been gained in this way. The realisation that international customary law does not rest on agreements and that that text pacta sunt servanda is itself a rule of customary law, led to new formulations of the basic norm.

As pointed out by Soviet author the maxim pacta sunt servanda does not have an absolute importance and hence it cannot be applied to every treaty. For example It will not apply to unequal treaties. Thus.”..........pacta sunt servanda embraces only lawfully concluded treaties, and only in relation to them can it play a progressive role.”

2) **Pacta terties nee nocent** – it is a fundamental principle that has been incorporated in article 34 of the vienna convention on the law of treaties. It means that only parties to contract are bound by the contract..but there are certain exceptions which are contained in articles 35 and 38 they are:

a) Treaties which concern the right of the third party.

b) Multilateral treaties which declare the established customary international law may even bind non parties

c) Multilateral treaties which create new rules of international law may also bind non parties

d) Some multilateral treaties have universal application and also when a treaty imposes some obligation then such a third party becomes party to a contract.

3) **Rebus sic stantibus** – rebus sic stantibus is also considered to be a ground for avoidance or termination of treaty. It means that if the fundamental or material circumstances under which a treaty is concluded change then this change becomes a basis for the avoidance or change or termination of a treaty.

**Amendment and modification**

Both amendment and modification relate to a revision of treaty in terms by parties. Amendment is the most formal process involving at least *prima facie* all parties to the treaty, while modification is a private arrangement between particular parties and in respect of particular provisions.

**Amendment**
In *bipartite treaty*, amendments are straightforward, but in a multipartite treaty the agreement of all states to a proposed amendment may be difficult to secure. Article 40 lays down the procedure which, if no provided by the treaty, to be followed, article 40 allows for amendment by less than all contracting paries to the original treaty by permitting amendment between those parties in agreement after (emphasis added) all states have been given the opportunity to participate in considering amendment proposal. An amending proposal does not, of course bind a state which although party to the original treaty, fails to become a party to amending agreement.

**Modification**

Article 41 allows two or more parties to a multipartite treaty to conclude a modifying agreement between themselves provided that the possibility of modification is recognised by the treaty, is not provided 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.\(^\text{13}\)

**Invalidity of treaties**

The Vienna Convention stipulates five grounds on which the validity of an agreement may be challenged. The convention exhaustive-states may not invoke other grounds of invalidity.

*The five grounds are:*

- Non-compliance with municipal law requirements
- Error,
- Fraud and corruption
- Coercion
- Jus cogens

**Other grounds**

- Illegality of object
- Constitutional restrictions
- Restriction on representative power

**Non-compliance with municipal requirements**

Arrangements for the exercise of states treaty making powers are left to each state and the constitutional requirements with respect to the ratification of treaties vary widely. A state may not plead a breach of its constitutional provisions relating to treaty making so as to invalidate an agreement, unless such a breach was manifest and objectively evident to any state conducting itself in the matter in accordance with normal practise and in good faith.

**Error**

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\(^{13}\) Kaczorowska alina; public international law; pg 228
Error is of limited significance. It plays a much less important role in international law than error in the municipal law of contract. 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.”

Error has been invoked almost exclusively in respect of boundary questions. A state which contributed by its behaviour to the error, or should have known of a possible error, cannot relieve itself subsequently of its treaty obligations. Errors in the working of the treaty are not a ground for invalidating the treaty. These must be corrected in accordance with article 79 of the convention and by procedure which may be quite informal.

**Fraud and corruption**

Like error, fraud and corruption are of little significance. Article 49 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 50 provides that a treaty may be invalidated if a state consent to a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating state. Neither corrupts fraudulent conduct nor is corruption defined in the convention or by international jurisprudence. Corruption involves something calculated to exercise a substantial influences on the representative and does not cover every small courtesy or favour shown to him.

**Coercion**

A treaty will be of no *legal effect* (emphasis added) if a state’s consent “has been procured by the coercion of its representative through acts or threats directed against him.” The use of coercion against a state’s representative is rare, especially as article 51 is concerned with coercion of the representative’s person, rather than with coercion by way of a threat of action against his state.

Acceptance of a treaty through coercion, and the threat of coercion against a state in violation of the principles of international law embodied in the Charter of the United Nations,” renders a treaty void. Article 52 reflects modern international law’s prohibition on the use of force. The Vienna Convention refers explicitly to the use of force as contained in article2 (4) of the Charter of the United Nations. Political and economic coercion were not included, in spite of the efforts of the less developed countries. To have extended article 52 would have been to open the “flood gates” and would have undermined the basic tenet, *pacta sunt servanda*.

**Conflict with Jus cogens**

‘Jus cogens’ refers to peremptory norms of international law. A peremptory norm is defined, for the purposes of the conventions as are one which is “accepted and recognised by the international community of states as a whole” and from which “no derogation is permitted and which can be modified only by a subsequent norms of general international law having the same character”. Any treaty which conflicts at the time of its conclusion with such a norms will be deemed void. Should new peremptory norms of general international law develop, any existing treaty which is contrary to that norms become void ad terminates. The
Vienna convention establishes that there are certain rules of international law which are of a superior status and which, as such, cannot be affected by treaty. But these peremptory norms remain unidentified and uncertain. What is certain is that the norms must not only be accepted by the international community, but it must also be accepted as being peremptory force. Rules which might be categorised as jus cogens are those prohibiting, genocide, slavery and the use of force.

**Illegality of object**

Illegality of object may arise from a conflict with

a) A rule of customary international law
b) A rule of conventional international law
c) A specific obligation created by a previous treaty with a third state

**Constitutional Restrictions**

It is well establishes as a rule of customary international law that the validity of the treaty may be open to question if it has been concluded in violation of constitutional law of one of the states party, since the states organs and representatives must have exceeded their powers in concluding such a treaty. Such constitutional restriction take various forms.

**Restriction on Representatives powers**

Even though a person who purports to express a state consent to be bound by a treaty has established his capacity to represent that state, it may that his authority to express his state consent to the treaty in question has been made subject to specific restriction. If he fails to observe that restriction it may be thought that his state later claim its apparent expression of consent to be bound is invalid. Article 47 of the Vienna convention provides that no such claim may be made, unless the restriction was notified to the other negotiating states to prior to the representative expression of his state’s consent.

**Termination of treaties**

The rule, pacta sunt servanda, is the fundamental principle of the law of treaties and is expressed in art 26 of the Vienna convention: ‘every treaty in force is binding upon the parties to it and must be performed by them in good faith.’

A state cannot release itself from its treaty obligations whenever it feels like it. If it could, treaties would become worthless. However, few treaties last forever, and in order to prevent the law from becoming too rigid some provision is made for the termination of treaties. But in so doing the law regarding the termination of treaties tries to steer a middle course between the two extremes of rigidity and insecurity.

Article 42(2) of the Vienna convention in seeking to protect the security of legal relations provides:
‘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’.

**Termination In Accordance With The Terms of the Treaty**

Article 54(a) provides that the termination of a treaty or the withdrawal of a party may take place ‘in conformity with the provisions of the treaty’.

The following are the examples of the most frequently used provisions for the termination of or for the withdrawal from treaty obligations.

1) The treaty may be for a specified period.
2) The treaty may be a minimum period with a right to withdraw at the expiry of that period.
3) The treaty may be for a specific purpose and terminate on completion of that purpose.
4) The treaty may allow withdrawal at any time.
5) The treaty may allow withdrawal in special circumstances.

**Termination by Agreement**

Article 54(b) of the Vienna Convention provides that the termination of a treaty or withdrawal of a party may take place ‘at any time by consent of all the parties after consultation with the other contracting states’.

*Implied right of denunciation or withdrawal*

The agreement of the parties to terminate the treaty may be implied. In this respect article 56 of the Vienna Convention provides:

“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."

A Right of denunciation or withdrawal may therefore be implied in certain types of treaties because of their very nature, for example, treaties of all alliance and commercial treaties. But under article 56 a right to denunciation or withdrawal can never be implied if the treaty contains an express provision regarding denunciation, withdrawal or termination.

*Implied termination where the parties enter into a similar treaty on the same subject matter*

Article 59 of the Vienna Convention provides:
“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.”

Therefore it is apparent from article 59 that in case of multilateral treaties implied termination is less readily established.

**Reduction of the Parties to a Multilateral Treaties below the number necessary for its Entry into Force**

If the parties to a multilateral treaty state it should only enter into force once a certain number of states have ratified it, there is no reason, in the absence of a specific provision to the contrary, why the treaty should terminate if, subsequently, the number of parties falls below the number necessary to bring the treaty into force.

This general rule is laid down in article 55 of the Vienna Convention:

‘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.’

**Material Breach of Treaty**

It is recognised that the material breach of a treaty by one party entitles the other party or to the treaty to invoke the breach as a ground of termination or suspension.

Article 60(1) of the Vienna Convention provides:

‘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’.

This right of termination or suspension has become accepted as being the main sanction for securing the observance of treaties.

However, the problem has become more complex in the case of breach of a multilateral treaty. There are two aspects to such treaties: the rights of the parties to the treaty as a group, and the rights of the individual states towards the breach.

In this respect article 60(2) of the Vienna Convention provides:

“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”.

Lastly we have article .

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.

**Article61**

“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”.

Such impossibility of performance does not automatically terminate the treaty but merely gives a party an option to terminate.

**Change in circumstances**- article 62 deals with it. The article reflects the doctrine of rebus sic stantibus. Article 62(2) excludes treaties fixing boundaries from the operation of the principle in order to avoid threats to the peace.

**War and armed conflict** – in the past war regarded as ending all treaties between belligerent states. However, today few belligerent states will admit to being in a state of war and hostilities short of war do not automatically terminate a treaty. Therefore some treaties may be suspended, others may terminate on the grounds of impossibility or fundamental change of circumstances but others will remain binding, e.g. the charter of the united nations and the 1949 Geneva Conventions. Also many multilateral treaties will today neutral states as well as belligerents among their parties.
The Vienna Conventions specifically deals with the effects of war on treaties.

**Settlement of dispute**

Article 65-68 of the Vienna Convention provide for the situation where a state:

‘.........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 it or suspending it.’

Article 65(1) provides that the state must notify the other parties of the ‘measure proposed to be taken with respect to the treaty and the reasons therefore.’ Article 65(2) provides that the notification should specify a period within which the other parties should raise objection and this period ‘except in cases of special urgency, shall not be less than three months after the receipt of the notification’. Article 65(3) provides that 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: negotiation, equity, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice’.

If no solution has been reached by the means specified in art 65(3) ‘within a period of 12 months following the date on which the objection was raised’ art 66 confers jurisdiction over other disputes arising from art 53 (ius cogens) and confers jurisdiction over other disputes on a special conciliation set up under an annex to convention.

These rules represent a significant innovation compared to the position under customary international law. Under customary international law, international courts and commission do not have jurisdiction over all cases concerning claims that treaty is invalid’ but only over those cases where the parties agree to submit the matter to such as court or commission.14

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14 Wallace M.M. Rebecca; international law; pg 249
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