Athens PIL
Athens Public International Law Center

NATIONAL AND KAPODISTRIAN UNIVERSITY OF ATHENS
SCHOOL OF LAW

Athens PIL Research Paper Series

MATERIALS ON THE VIENNA CONVENTION ON THE LAW OF TREATIES
2012-2019

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Research Paper No. 1/2019

http://www.athenspil.law.uoa.gr

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FOREWORD

The law of treaties forms the backbone of the international legal order. As much as treaties contribute to the peaceful co-operation of States and other international actors, so does the international law of treaties to the fundamental role of treaties and, thus, provides an important element of international peace and security. Given the importance of treaties and their law for the international legal order, it is hardly surprising that already in 1949, the International Law Commission awarded priority to this codification project. Adopted on 23 May 1969, and entered into force on 27 January 1980, the Vienna Convention on the Law of Treaties (VCLT or Convention) has been since in constant evolution through State practice and case -law. It is the latter aspect of the the law's development that the present study tries to capture in order to enable an overall assessment of VCLT's authority and impact in modern international law.

Given the fundamental place of the law of treaties within the international legal order, it is only natural that international courts and tribunals have been frequent users of the VCLT. A thorough study of international judicial and arbitral practice in relation to the Convention has immense practical significance for our understanding of the law, especially since the VCLT is no self-explanatory piece of international legislation. It also evinces who at the end of the day are the main users of the articles. Even further, a study of the law on treaties inevitably reveals a lot about the content of the law, but also about the way in which the law comes to life and evolves through the decisions of international courts and tribunals.

The research project has two main aims. First, to document the recent instances where international courts, tribunals or other bodies refer explicitly to the VCLT. But, in line with the overall aim of the project which is to provide the necessary background for an assessment of the impact of the VCLT, some exceptions have been allowed where a decision does not reference the Articles *eo nomine* or the reference is only made in a footnote to the body of the judgment/award/decision, but its inclusion was considered important nonetheless regarding the content of the Convention provisions. The 1st of January 2012 has been selected as the threshold-date determining the 'recency' of a judgment/award/decision. Nevertheless, the citing of older landmark case-law with respect to VCLT provisions has been the object of numerous publications, so that a restatement here would not have offered a scientific contribution as we understand it.

Second, the project aims to offer a translation of the Convention in modern Greek. The Greek law of 1974 transposing the VCLT into the greek legal order is written in an archaic form of modern greek (καθαρεύουσα). Thus, it is not easily readable by law students. Further, the terminology used in not consistent throughout the text and the meaning of the original text has, in places, been altered.

What follows in this volume is a compilation, to the best of our efforts, of the practice of international courts and tribunals from the 1st of January 2012 and up to the completion of the present study, i.e. the 31st of January 2019. During this period, 118 relevant decisions of international courts, tribunals and other bodies were recorded. The general formatting of the present collection of materials follows the previous similar study carried out by LLM students of the same programme. Each VCLT provision is translated in modern Greek and then followed by the selected extracts of decisions/judgments/awards. No further context in which the dicta were made is given. Submissions of parties invoking the articles, and opinions of judges appended to a decision are not included.

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This volume compiles the research assignments carried out by the students of the Athens International Studies LL.M. Program (’19 class) as part of their assessment for the course “International Courts and Tribunals” taught by Professor Photini Pazartzis and Lecturer Anastasios Gourgourinis. Dr. Nikolaos Voulgaris assisted the students with researching the materials included herein, as well as editing the students’ work and compiling it in a single volume.

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Special thanks are due to Katerina Daskalopoulou, Natalia Mouzoula and Marios Tokas for their assistance in editing and formatting.

VIENNA CONVENTION ON THE LAW OF TREATIES

The States Parties to the present Convention,
Considering the fundamental role of treaties in the history of international relations,
Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,
Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,
Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,
Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,
Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,
Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,
Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,
Have agreed as follows:

ΣΥΜΒΑΣΗ ΤΗΣ ΒΙΕΝΝΗΣ ΓΙΑ ΤΟ ΔΙΚΑΙΟ ΤΩΝ ΣΥΝΘΗΚΩΝ

Τα Κράτη Μέρη της παρούσας Σύμβασης,
Λαμβάνοντας υπόψιν τον θεμελιώδη ρόλο των συνθηκών στην ιστορία των διεθνών σχέσεων,
Αναγνωρίζοντας την διαρκώς αυξανόμενη σημασία των συνθηκών ως πηγή του διεθνούς δικαίου και ως μέσο ανάπτυξης της ειρηνικής συνεργασίας ανάμεσα στα έθνη ανεξαρτήτως των συνταγματικών και κοινωνικών τους συστημάτων,
Σημειώνοντας ότι οι αρχές της ελεύθερης συναίνεσης και της καλής πίστης και ο κανόνας της τήρησης των συμπεφωνημένων (*pacta sunt servanda*) είναι διεθνώς αναγνωρισμένοι,
Επιβεβαιώνοντας ότι οι διαφορές σχετικά με συνθήκες, όπως άλλες διεθνείς διαφορές, πρέπει να επιλύονται με ειρηνικό τρόπο και σε συμμόρφωση με τις αρχές της δικαιοσύνης και του διεθνούς δικαίου,
Ανακαλώντας στη μνήμη τους την αποφασιστικότητα των λαών των Ηνωμένων Εθνών να εδραιώσουν συνθήκες υπό τις οποίες η δικαιοσύνη και ο σεβασμός για τις υποχρεώσεις που απορρέουν από διεθνείς συνθήκες μπορούν να διατηρηθούν,
Έχοντας κατά νου τις αρχές του διεθνούς δικαίου που εμπεριέχονται στον Χάρτη των Ηνωμένων Εθνών, όπως τις αρχές των ίσων δικαιωμάτων και της αυτοδιάθεσης των λαών, της κυρίαρχης ισότητας και της ανεξαρτησίας όλων των Κρατών, της μη επέμβασης στις εσωτερικές υποθέσεις των Κρατών, της απαγόρευσης της απειλής ή της χρήσης βίας και του οικουμενικού σεβασμού για τα ανθρώπινα δικαιώματα και τις θεμελιώδεις ελευθερίες για όλους καθώς και την τήρηση αυτών,
Πιστεύοντας ότι η κωδικοποίηση και η προοδευτική ανάπτυξη του δικαίου των συνθηκών που επιτυγχάνεται στην παρούσα Σύμβαση θα προωθήσει τους σκοπούς των Ηνωμένων Εθνών όπως ορίζονται στον Χάρτη, δηλαδή, τη διατήρηση της διεθνούς ειρήνης και ασφάλειας, την ανάπτυξη των φιλικών σχέσεων και την επίτευξη της συνεργασίας ανάμεσα στα έθνη,
Επιβεβαιώνοντας ότι οι κανόνες του εθιμικού διεθνούς δικαίου θα συνεχίσουν να διέπουν ζητήματα που δεν ρυθμίζονται από τις διατάξεις της παρούσας Σύμβασης,
Έχουν συμφωνήσει ως εξής:

PART I

INTRODUCTION

ΜΕΡΟΣ Ι
ΕΙΣΑΓΩΓΗ

Article 1

Scope of the present Convention

The present Convention applies to treaties between States.

Άρθρο 1

Πεδίο εφαρμογής της παρούσας Σύμβασης

Η παρούσα Σύμβαση εφαρμόζεται σε συνθήκες μεταξύ Κρατών.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS

In the matter of Femi Falana v African Union, App No 001/2011 (26 June 2012)

"42. With regard to the jurisdiction of the Court, the Respondent denies that the Protocol as well as the Charter and the Constitutive Act of the African Union were adopted by the African Union and submits that these instruments were adopted by Member States of the African Union as is evident from their preambles. He adds that according to Article 63 (1) of the Charter and Article 34 (1) of the Protocol, the two instruments are open to signature, ratification or accession by African States only.

43. The Respondent states that, in Article 34 (6), the Protocol talks about a State and therefore submits that the African Union not being a State cannot ratify the Protocol and that the Protocol cannot be interpreted in a manner which calls in a corporate entity to assume obligations on behalf of the State."

Article 2

Use of terms

1. For the purposes of the present Convention:
(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;
(b) "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;
(c) "Full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;
(d) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;
(e) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;
(f) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
(g) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force;
(h) "Third State" means a State not a party to the treaty;
(i) "International organization" means an intergovernmental organization.
2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Άρθρο 2

Χρήση των όρων της Σύμβασης

1. Για τους σκοπούς της παρούσας Σύμβασης:
(α) Με τον όρο «Συνθήκη» νοείται διεθνής συμφωνία που έχει συναφθεί μεταξύ Κρατών σε έγγραφο τύπο και διέπεται από το διεθνές δίκαιο, ανεξάρτητα από το αν ενσωματώνεται σε ένα έγγραφο ή σε δύο ή περισσότερα συναφή, οποιαδήποτε και αν είναι η ειδική της ονομασία.
(β) Με τον όρο «Επικύρωση», «Αποδοχή», «Έγκριση», και «Προσχώρηση», νοείται αντίστοιχα η έτσι επονομαζόμενη διεθνής ενέργεια με την οποία ένα Κράτος θεμελιώνει στο διεθνές πεδίο τη συναίνεσή του προς δέσμευση από μια συνθήκη·
(γ) Με τον όρο «Πληρεξουσιότητα» νοείται το έγγραφο που πηγάζει από την αρμόδια αρχή ενός Κράτους και καθορίζει ένα ή περισσότερα πρόσωπα ως εκπροσώπους του Κράτους για τη διαπραγμάτευση, υιοθέτηση, ή επιβεβαίωση της γνησιότητας του κειμένου συνθήκης, για την έκφραση της συναίνεσης προς δέσμευση του Κράτους από μία συνθήκη, ή για την πραγματοποίηση οποιασδήποτε άλλης πράξης σχετικής με τη συνθήκη·
(δ) Με τον όρο «Επιφύλαξη» νοείται η μονομερής δήλωση ενός Κράτους, κατά την υπογραφή, επικύρωση, αποδοχή ή προσχώρηση σε μια συνθήκη, ανεξάρτητα από το πώς διατυπώνεται ή

ονομάζεται, με την οποία (το Κράτος) επιδιώκει να αποκλείσει ή να τροποποιήσει το έννομο αποτέλεσμα ορισμένων διατάξεων της συνθήκης κατά την εφαρμογή τους ως προς το Κράτος αυτό·
(ε) Με τον όρο «Κράτος που συμμετέχει στις διαπραγματεύσεις» νοείται το Κράτος που συμμετείχε στη σύνταξη και υιοθέτηση του κειμένου της συνθήκης·
(στ) Με τον όρο «Συμβαλλόμενο Κράτος» νοείται το Κράτος που συναίνεσε να δεσμευτεί από τη συνθήκη ανεξάρτητα από το αν η συνθήκη έχει τεθεί σε ισχύ·
(ζ) Με τον όρο «Μέρος» νοείται το Κράτος που συναίνεσε να δεσμευτεί από τη συνθήκη και για το οποίο η συνθήκη έχει τεθεί σε ισχύ·
(η) Με τον όρο «Τρίτο Κράτος» νοείται το Κράτος που δεν είναι μέρος στη συνθήκη·
(θ) Με τον όρο «Διεθνής Οργανισμός» νοείται ένας διακυβερνητικός οργανισμός.
2. Οι διατάξεις της παραγράφου 1 περί χρήσης των όρων της παρούσας Σύμβασης, δεν θίγουν τη χρήση των όρων αυτών ή την έννοια που ενδεχομένως έχει δοθεί σε αυτούς στο εσωτερικό δίκαιο οποιουδήποτε Κράτους.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Obligation to Negotiate Access in the Pacific Ocean (Bolivia v Chile) (Merits) [2018] ICJ General List No 153

"116. The Court observes that, under Article 2, paragraph 1 (a), of the Vienna Convention, a treaty may be "embodied […] in two or more related instruments". According to customary international law as reflected in Article 13 of the Vienna Convention, the existence of the States' consent to be bound by a treaty constituted by instruments exchanged between them requires either that "[the instruments provide that their exchange shall have that effect" or that "[i]t is otherwise established that those States were agreed that the exchange of instruments should have that effect". The first condition cannot be met, because nothing has been specified in the exchange of Notes about its effect. Furthermore, Bolivia has not provided the Court with adequate evidence that the alternative condition has been fulfilled.
117. The Court further observes that the exchange of Notes of 1 and 20 June 1950 does not follow the practice usually adopted when an international agreement is concluded through an exchange of related instruments. According to that practice, a State proposes in a note to another State that an agreement be concluded following a certain text and the latter State answers with a note that reproduces an identical text and indicates its acceptance of that text. Other forms of exchange of instruments may also be used to conclude an international agreement. However, the Notes exchanged between Bolivia and Chile in June 1950 do not contain the same wording nor do they reflect an identical position, in particular with regard to the crucial issue of negotiations concerning Bolivia's sovereign access to the Pacific Ocean. The exchange of Notes cannot therefore be considered an international agreement.
118. In any event, Chile's Note, whichever translation given by the Parties is used, conveys Chile's willingness to enter into direct negotiations, but one cannot infer from it Chile's acceptance of an obligation to negotiate Bolivia's sovereign access to the sea. 119. The Court observes that the Trucco Memorandum, which was not formally addressed to Bolivia but was handed over to its authorities, cannot be regarded only as an internal document. However, by repeating certain statements made in the Note of 20 June 1950, this Memorandum does not create or reaffirm any obligation to negotiate Bolivia's sovereign access to the Pacific Ocean."

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3

"42. Under the customary international law of treaties, which is applicable in this case since neither Somalia nor Kenya is a party to the Vienna Convention, an international agreement concluded between States in written form and governed by international law constitutes a treaty (see Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, p. 429, para. 263, referring to Article 2, paragraph 1, of the Vienna Convention). The MOU is a written document, in which Somalia and Kenya record their agreement on certain points governed by international law. The inclusion of a provision addressing the entry into force of the MOU is indicative of the instrument's binding character. Kenya considered the MOU to be a treaty, having requested its registration in accordance with Article 102 of the Charter of the United Nations, and Somalia did not protest that registration until almost five years thereafter (see paragraph 19 above)."

PERMANENT COURT OF ARBITRATION

South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) Case No 2013-19, Award on Jurisdiction and Admissibility, October 29, 2015

"214. Although the DOC is entitled a "declaration" rather than a "treaty" or "agreement", the Tribunal acknowledges that international agreements may take a number of forms and be given a variety of names. The form or designation of an instrument is thus not decisive of its status as an agreement establishing legal obligations between the parties. The Tribunal observes that the DOC shares some hallmarks of an international treaty. It is a formal document with a preamble, it is signed by the foreign ministers of China and the ASEAN States, and the signatory States are described in the DOC as "Parties"."

COURT OF JUSTICE OF THE EUROPEAN UNION

Case T-257/16 *NM v European Council* [2017] Order of the General Court (First Chamber, Extended Composition)

"26. In its replies of 18 November 2016 to the Court's questions, the European Council explained, inter alia, that, to the best of its knowledge, no agreement or treaty in the sense of Article 218 TFEU or Article 2(1)(a) of the Vienna Convention on the law of treaties of 23 May 1969 had been concluded between the European Union and the Republic of Turkey. The EU-Turkey statement, as published by means of Press Release No 144/16, was, it submitted, merely 'the fruit of an international dialogue between the Member States and [the Republic of] Turkey and — in the light of its content and of the intention of its authors — [was] not intended to produce legally binding effects nor constitute an agreement or a treaty.'"

Opinion 1/13 *Opinion of the Court pursuant to Article 218(11) TFEU* (Grand Chamber) 14 October 2014

"37. Under Article 2(1)(a) of the Vienna Convention on the Law of Treaties of 23 May 1969, an international agreement may be embodied in a single instrument or in two or more related instruments. Those instruments may thus be the expression of the 'convergence of intent' on the part of two or more subjects of international law, which those instruments establish formally."

Article 3

International agreements not within the scope of the present convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:
(a) The legal force of such agreements;
(b) The application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
(c) The application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Άρθρο 3

Διεθνείς συμφωνίες εκτός του πεδίου της παρούσας Σύμβασης

Το γεγονός ότι η παρούσα Σύμβαση δεν έχει εφαρμογή σε διεθνείς συμφωνίες που έχουν συναφθεί μεταξύ Κρατών και άλλων υποκειμένων του διεθνούς δικαίου ή μεταξύ τέτοιων άλλων υποκειμένων του διεθνούς δικαίου, ή σε διεθνείς συμφωνίες που δεν έχουν συναφθεί εγγράφως, δεν επηρεάζει:
(α) Τη νομική ισχύ τέτοιων συμφωνιών·
(β) Την εφαρμογή σε αυτές οποιωνδήποτε κανόνων της παρούσας Σύμβασης, στους οποίους θα υπάγονταν κατά το διεθνές δίκαιο ανεξάρτητα από την Σύμβαση·
(γ) Την εφαρμογή της Σύμβασης στις σχέσεις μεταξύ Κρατών που διέπονται από διεθνείς συμφωνίες στις οποίες είναι μέρη και άλλα υποκείμενα του διεθνούς δικαίου.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES
INTERNATIONAL COURT OF JUSTICE
Obligation to Negotiate Access in the Pacific Ocean (Bolivia v Chile) (Merits) [2018] ICJ General List No 153
"95. Bolivia argues that, like treaties in written form, oral and tacit agreements can produce legal effects and be binding between the parties. Bolivia submits that, even though the 1969 Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention") does not apply to such agreements, their legal force, according to Article 3 of the Vienna Convention, is not affected. Bolivia maintains that, whether an instrument is capable of setting forth binding obligations is a matter of substance, not of form. Bolivia contends that the intention of the Parties to create rights and obligations in a particular instrument must be identified in an objective manner.
96. Chile acknowledges that, in order to assess whether there is a binding international agreement, the intention of the Parties must be established in an objective manner. However, Chile argues that, following an analysis of the text of the instruments invoked by Bolivia and the circumstances of their formation, neither State had the intention to create a legal obligation to negotiate Bolivia's sovereign access to the sea. According to Chile, an expression of willingness to negotiate cannot create an obligation to negotiate on the Parties. Chile argues that, if the words used "are not suggestive of legal obligations, then they will be characterizing a purely political stance". Chile further maintains that only in exceptional cases has the Court found that a tacit agreement has come into existence.

97. The Court notes that, according to customary international law, as reflected in Article 3 of the Vienna Convention, "agreements not in written form" may also have "legal force". Irrespective of the form that agreements may take, they require an intention of the parties to be bound by legal obligations. This applies also to tacit agreements. In this respect, the Court recalls that "[e]vidence of a tacit legal agreement must be compelling" (Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras), Judgment, I.C.J. Reports 2007 (II), p. 735, para. 253)."

COURT OF JUSTICE OF THE EUROPEAN UNION

Case C-266/16 *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs Secretary of State for Environment, Food and Rural Affairs* [2018] Judgment (Grand Chamber)

"11. Article 3 of the Vienna Convention, which is headed 'International agreements not within the scope of the present Convention', provides:

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

(b) the application to [such agreements] of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention."

Case C-104/16 *Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)* [2016] Judgment (Grand Chamber)

"5. Article 3 of the Vienna Convention, which is headed 'International agreements not within the scope of the present Convention', provides:

'The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect: […] (b) the application to [such agreements] of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention."

Article 4

Non-retroactivity of the present Convention

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

Άρθρο 4

Μη αναδρομικότητα της παρούσας Σύμβασης

Με την επιφύλαξη της εφαρμογής οποιωνδήποτε κανόνων της παρούσας Σύμβασης, στους οποίους οι συνθήκες θα υπάγονταν οι συνθήκες βάσει διεθνούς δικαίου ανεξάρτητα από τη Σύμβαση, η Σύμβαση έχει εφαρμογή μόνο σε συνθήκες που συνάπτονται από τα Κράτη μετά τη θέση σε ισχύ της παρούσας Σύμβασης ως προς τα Κράτη αυτά.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

EUROPEAN COURT OF HUMAN RIGHTS

Case of Stichting mothers of Sebrenica and others v Netherlands, App No 65542/12 (ECHR, 11 June 2013)

"144. Moreover, as mentioned above (see paragraph 139 (e)), the Convention forms part of international law. It must consequently determine State responsibility in conformity and harmony with the governing principles of international law, although it must remain mindful of the Convention's special character as a human rights treaty. Thus, although the Vienna Convention on the Law of Treaties of 23 May 1969 postdates the United Nations Charter, the General Convention on Privileges and Immunities of the United Nations and the Convention and is therefore not directly applicable (see Article 4 of the Vienna Convention), the Court must have regard to its provisions in so far as they codify pre-existing international law, and in particular its Article 31 § 3 (c) (see Golder, cited above, § 29; as more recent authorities and mutatis mutandis, Al-Adsani, cited above, § 55; Behrami and Behrami v France and Saramati v France, Germany and Norway, cited above, § 122; and Cudak, cited above, § 56)."

Article 5

Treaties constituting international organizations and treaties adopted within an international organization

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

Άρθρο 5

Συνθήκες που ιδρύουν διεθνείς οργανισμούς και συνθήκες που υιοθετούνται στο πλαίσιο ενός διεθνούς οργανισμού

Η παρούσα Σύμβαση έχει εφαρμογή σε κάθε συνθήκη που αποτελεί έγγραφο σύστασης διεθνούς οργανισμού και σε κάθε συνθήκη που υιοθετείται στο πλαίσιο ενός διεθνούς οργανισμού με την επιφύλαξη τυχόν σχετικών κανόνων του οργανισμού.

PART II

CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1
CONCLUSION OF TREATIES

Article 6
Capacity of States to conclude treaties
Every State possesses capacity to conclude treaties.

ΜΕΡΟΣ ΙΙ

ΣΥΝΑΨΗ ΚΑΙ ΘΕΣΗ ΣΕ ΙΣΧΥ ΤΩΝ ΣΥΝΘΗΚΩΝ

ΤΜΗΜΑ 1

ΣΥΝΑΨΗ ΣΥΝΘΗΚΩΝ

Άρθρο 6

Ικανότητα των Κρατών προς σύναψη συνθηκών

Κάθε Κράτος διαθέτει την ικανότητα να συνάπτει συνθήκες.

Article 7

Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:
(a) He produces appropriate full powers; or
(b) It appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
(b) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
(c) Representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Άρθρο 7

Πληρεξουσιότητα

1. Ένα πρόσωπο θεωρείται ότι εκπροσωπεί ένα Κράτος με σκοπό την υιοθέτηση ή την επιβεβαίωση ως γνήσιου του κειμένου μιας συνθήκης ή με σκοπό την έκφραση της συναίνεσης του Κράτους να δεσμευθεί από μια συνθήκη εάν:
(α) Παρουσιάζει την κατάλληλη πληρεξουσιότητα· ή
(β) Προκύπτει από την πρακτική των ενδιαφερομένων Κρατών ή από άλλες περιστάσεις ότι η πρόθεσή τους ήταν να θεωρήσουν το πρόσωπο αυτό ως εκπρόσωπο του Κράτους για τους σκοπούς αυτούς χωρίς να επιδείξει την πληρεξουσιότητα.
2. Λόγω των καθηκόντων τους και χωρίς να χρειάζεται να παρουσιάζουν πληρεξουσιότητα, θεωρούνται ότι εκπροσωπούν το Κράτος τους:
(α) Οι Αρχηγοί Κρατών, Αρχηγοί Κυβερνήσεων και Υπουργοί Εξωτερικών, με σκοπό την διενέργεια όλων των πράξεων που αφορούν τη σύναψη μιας συνθήκης·
(β) Οι Αρχηγοί των διπλωματικών αποστολών, με σκοπό την υιοθέτηση του κειμένου μιας συνθήκης μεταξύ του Κράτους διαπίστευσης και του Κράτους στο οποίο είναι διαπιστευμένοι·
(γ) Εκπρόσωποι διαπιστευμένοι από τα Κράτη σε διεθνή συνδιάσκεψη ή σε διεθνή οργανισμό ή σε ένα από τα όργανά του, με σκοπό την υιοθέτηση του κειμένου μιας συνθήκης σε αυτή τη συνδιάσκεψη, οργανισμό ή όργανο.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3

"38. The MOU caused some domestic controversy in Somalia in the months after it was signed. It was debated and rejected by the Transitional Federal Parliament of Somalia on 1 August 2009. In a letter addressed to the Secretary-General of the United Nations dated 10 October

2009, but only forwarded to him under cover of a letter from the Permanent Representative of Somalia to the United Nations dated 2 March 2010, the Prime Minister of the Transitional Federal Government informed the Secretary-General of this rejection, and "request[ed] the relevant offices of the UN to take note of the situation and treat the MOU as non-actionable". Several years later, in a letter to the Secretary-General of the United Nations dated 4 February 2014, the Somali Minister of Foreign Affairs and International Co-operation maintained that "no [MOU] is in force", highlighting that ratification thereof had been rejected by the Parliament of Somalia. In that letter, he referred to customary international law reflected, in his view, in Article 7 of the 1969 Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention"), which addresses the circumstances in which a person may, by producing "full powers" or otherwise, enter into a treaty on behalf of a State. He contended that the Minister who had signed the MOU "did not produce appropriate documents demonstrating his powers to represent the Somali Republic for the purpose of agreeing to the text of the MOU", that it was not customary for Somalia to allow that Minister "to enter into binding bilateral arrangements which concern maritime delimitation and the presentation of submissions to the [CLCS] and its consideration of them", and that the Kenyan representatives had been informed at the time of signing that "the MOU would require ratification. […]

43. Somalia no longer appears to contest that the Minister who signed the MOU was authorized to do so as a matter of international law. The Court recalls that, under international law, as codified in Article 7 of the Vienna Convention, by virtue of their functions and without having to produce full powers, Heads of State, Heads of Government and Ministers for Foreign Affairs are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty. These State representatives, under international law, may also duly authorize other officials to adopt, on behalf of a State, the text of a treaty or to express the consent of the State to be bound by a treaty. The Court observes that the Prime Minister of the Transitional Federal Government of Somalia signed, on 6 April 2009, full powers by which he "authorized and empowered" the Somali Minister for National Planning and International Co-operation to sign the MOU. The MOU explicitly states that the two Ministers who signed it were "duly authorized by their respective Governments" to do so. The Court is thus satisfied that, as a matter of international law, the Somali Minister properly represented Somalia in signing the MOU on its behalf. […]

46. In his letter of 4 February 2014 to the Secretary-General of the United Nations, the Foreign Minister of Somalia stated that the Kenyan representatives present for the signing of the MOU had been informed orally by the Somali Minister who signed it of the requirement that it be ratified by the Transitional Federal Parliament of Somalia. Kenya denies that such a communication took place and there is no evidence to support Somalia's assertion. Indeed, any such statement by the Minister would have been inconsistent with the express provision of the MOU regarding its entry into force upon signature. The Court also notes that the full powers, dated 6 April 2009, by which the Prime Minister of the Transitional Federal Government of Somalia "authorized and empowered" the Minister to sign the MOU, give no indication that it was Somalia's intention to sign the MOU subject to ratification."

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh v Myanmar) Judgment of 14 March 2012, ITLOS Reports 2012, 4

"96. On the question of the authority to conclude a legally binding agreement, the Tribunal observes that, when the 1974 Agreed Minutes were signed, the head of the Burmese delegation was not an official who, in accordance with article 7, paragraph 2, of the Vienna Convention, could engage his country without having to produce full powers. Moreover, no evidence was

provided to the Tribunal that the Burmese representatives were considered as having the necessary authority to engage their country pursuant to article 7, paragraph 1, of the Vienna Convention. The Tribunal notes that this situation differs from that of the Maroua Declaration which was signed by the two Heads of State concerned."

Article 8

Subsequent confirmation of an act performed without authorization

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

Άρθρο 8

Μεταγενέστερη έγκριση πράξης που πραγματοποιήθηκε χωρίς εξουσιοδότηση

Πράξη σχετική με τη σύναψη συνθήκης, που πραγματοποιήθηκε από πρόσωπο μη εξουσιοδοτημένο κατά τις διατάξεις του άρθρου 7 ώστε να εκπροσωπεί το Κράτος προς το σκοπό αυτό, δεν παράγει έννομα αποτελέσματα, εκτός εάν μεταγενέστερα εγκριθεί από το Κράτος αυτό.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh v Myanmar) Judgment of 14 March 2012, ITLOS Reports 2012, 4

"80. Regarding the question of the authority of Myanmar's delegation, Bangladesh considers that the head of the Burmese delegation who signed the 1974 Agreed Minutes was the appropriate official to negotiate with Bangladesh in 1974 and "did not require full powers to conclude an agreement in simplified form". Bangladesh argues that, even if the head of the Burmese delegation lacked the authority to do so, the agreement remains valid "if it [was] afterwards confirmed by the State concerned" in accordance with article 8 of the Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention"). In this respect Bangladesh holds the view that the 1974 Agreed Minutes "were confirmed and re-adopted in 2008."

81. According to Bangladesh:

*[w]hat matters is whether the Parties have agreed on a boundary, even in simplified form, not whether their agreement is a formally negotiated treaty or has been signed by representatives empowered to negotiate or ratify the treaty.

82. Bangladesh points out that, in the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening) (Judgment, I.C.J. Reports 2002, p. 303, at p. 429, para. 263), the International Court of Justice (hereinafter "the ICJ") "held that the Maroua Declaration constituted an international agreement in written form tracing a boundary and that it was thus governed by international law and constituted a treaty in the sense of the 1969 Vienna Convention on the Law of Treaties".

83. Myanmar argues that members of its delegation to the negotiations in November 1974 lacked authority "to commit their Government to a legally-binding treaty". It states, in this regard, that the head of the Burmese delegation, Commodore Hlaing, a naval officer, could not be considered as representing Myanmar for the purpose of expressing its consent to be bound by a treaty as he was not one of those holders of high-ranking office in the State referred to in article 7, paragraph 2, of the Vienna Convention. Furthermore, the circumstances described in article 7, paragraph 1, of the Vienna Convention do not apply in the present case since Commodore Hlaing did not have full powers issued by the Government of Myanmar and there

were no circumstances to suggest that it was the intention of Myanmar and Bangladesh to dispense with full powers.

In the view of Myanmar, under article 8 of the Vienna Convention an act by a person who cannot be considered as representing a State for the purposes of concluding a treaty is without legal effect unless afterwards confirmed by that State. Myanmar adds that what has to be confirmed is the act of the unauthorised person and submits that this act by itself has no legal effect and states that "[i]t does not establish an agreement that is voidable". It states further that this is "clear from the very fact that article 8 is placed in Part II of the Vienna Convention on the conclusion and entry into force of treaties, and not in Part V" on invalidity, termination and suspension of the operation of treaties. […]

97. The fact that the Parties did not submit the 1974 Agreed Minutes to the procedure required by their respective constitutions for binding international agreements is an additional indication that the Agreed Minutes were not intended to be legally binding.

98. For these reasons, the Tribunal concludes that there are no grounds to consider that the Parties entered into a legally binding agreement by signing the 1974 Agreed Minutes. The Tribunal reaches the same conclusion regarding the 2008 Agreed Minutes since these Minutes do not constitute an independent commitment but simply reaffirm what was recorded in the 1974 Agreed Minutes. "

Article 9

Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Άρθρο 9

Υιοθέτηση του κειμένου

1. Η υιοθέτηση του κειμένου μιας συνθήκης πραγματοποιείται με τη συναίνεση όλων των Κρατών που συμμετείχαν στην κατάρτισή του, με εξαίρεση τις διατάξεις της παραγράφου 2.
2. Η υιοθέτηση του κειμένου μιας συνθήκης στο πλαίσιο διεθνούς συνδιάσκεψης πραγματοποιείται με την ψήφο των δύο τρίτων των παρόντων Κρατών που έχουν δικαίωμα ψήφου, εκτός εάν, με την ίδια πλειοψηφία, αποφασίσουν να εφαρμόσουν διαφορετικό κανόνα.

Article 10

Authentication of the text

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

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

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

Άρθρο 10

Επιβεβαίωση γνησιότητας του κειμένου

Το κείμενο μίας συνθήκης καθίσταται αυθεντικό και οριστικό:

(α) Με την διαδικασία που προβλέπεται από το κείμενο ή που συμφωνήθηκε από τα Κράτη που συμμετείχαν στην κατάρτισή του· ή

(β) Ελλείψει τέτοιας διαδικασίας, με την υπογραφή, την υπογραφή δια περιφοράς (ad referendum) ή την μονογραφή από τους εκπροσώπους αυτών των Κρατών του κειμένου της συνθήκης ή της Τελικής Πράξης της συνδιάσκεψης στην οποία ενσωματώθηκε το κείμενο.

Article 11

Means of expressing consent to be bound by a treaty

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

Άρθρο 11

Τρόποι έκφρασης της συναίνεσης προς δέσμευση από μια συνθήκη

Η συναίνεση ενός Κράτους να δεσμευθεί από μία συνθήκη, δύναται να εκφραστεί με την υπογραφή, την ανταλλαγή εγγράφων που συνιστούν μια συνθήκη, την επικύρωση, την αποδοχή, την έγκριση, ή την προσχώρηση, ή όπως άλλως τυχόν συμφωνηθεί.

Article 12

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:
(a) The treaty provides that signature shall have that effect;
(b) It is otherwise established that the negotiating States were agreed that signature should have that effect; or
(c) The intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.
2. For the purposes of paragraph 1:
(a) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;
(b) The signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Άρθρο 12

Συναίνεση προς δέσμευση από μια συνθήκη που εκφράζεται με υπογραφή

1. Η συναίνεση ενός Κράτους προς δέσμευση από μία συνθήκη εκφράζεται μέσω της υπογραφής του εκπροσώπου του, όταν:
(α) Η συνθήκη προβλέπει ότι η υπογραφή θα έχει τέτοια ισχύ·
(β) Διαπιστώνεται άλλως ότι τα Κράτη που συμμετείχαν στην διαπραγμάτευση συμφώνησαν ότι η υπογραφή πρέπει να έχει τέτοια ισχύ· ή
(γ) Η πρόθεση του Κράτους να δώσει τέτοια ισχύ στην υπογραφή προκύπτει από την πληρεξουσιότητα του εκπροσώπου του ή έχει εκφραστεί κατά τη διάρκεια των διαπραγματεύσεων.
2. Για τους σκοπούς της παραγράφου 1:
(α) Η μονογραφή ενός κειμένου συνιστά υπογραφή της συνθήκης όταν προκύπτει ότι τα Κράτη που συμμετείχαν στις διαπραγματεύσεις συμφώνησαν καθ' αυτόν τον τρόπο· ή
(β) Η υπογραφή δια περιφοράς (ad referendum) μιας συνθήκης από εκπρόσωπο, εάν αυτή εγκριθεί από το Κράτος του, συνιστά οριστική υπογραφή της συνθήκης.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3

"45. In respect of Somalia's contentions regarding the ratification requirement under Somali law, the Court recalls that, under the law of treaties, both signature and ratification are recognized means by which a State may consent to be bound by a treaty. As the Court has previously outlined: "while in international practice a two-step procedure consisting of signature and ratification is frequently provided for in provisions regarding entry into force of a treaty, there are also cases where a treaty enters into force immediately upon signature. Both customary international law and the Vienna Convention on the Law of Treaties leave it completely up to States which procedure they want to follow." (Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, p. 429, para. 264.)

The Court notes that the MOU provides, in its final paragraph, that "[t]his Memorandum of Understanding shall enter into force upon its signature" and that it does not contain a ratification requirement. Under customary international law as codified in Article 12, paragraph 1 (a), of the Vienna Convention, a State's consent to be bound is expressed by signature where the treaty so provides."

Article 13

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

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:
(a) The instruments provide that their exchange shall have that effect; or
(b) It is otherwise established that those States were agreed that the exchange of instruments shall have that effect.

Άρθρο 13

Συναίνεση προς δέσμευση από μια συνθήκη που εκφράζεται μέσω ανταλλαγής εγγράφων που συνιστούν συνθήκη

Η συναίνεση Κρατών για τη δέσμευσή τους από μία συνθήκη που συνίσταται σε έγγραφα που έχουν ανταλλαχθεί μεταξύ τους εκφράζεται μέσω της ανταλλαγής αυτής, όταν:
(α) Τα έγγραφα προβλέπουν ότι η ανταλλαγή τους θα έχει τέτοια ισχύ· ή
(β) Διαπιστώνεται άλλως ότι τα εν λόγω Κράτη συμφώνησαν ότι η ανταλλαγή των εγγράφων θα έχει τέτοια ισχύ.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Obligation to Negotiate Access in the Pacific Ocean (Bolivia v Chile) (Merits) General List No 153 [2018] ICJ

"116. The Court observes that, under Article 2, paragraph 1 (a), of the Vienna Convention, a treaty may be "embodied . . . in two or more related instruments". According to customary international law as reflected in Article 13 of the Vienna Convention, the existence of the States' consent to be bound by a treaty constituted by instruments exchanged between them requires either that "[t]he instruments provide that their exchange shall have that effect" or that "[i]t is otherwise established that those States were agreed that the exchange of instruments should have that effect". The first condition cannot be met, because nothing has been specified in the exchange of Notes about its effect. Furthermore, Bolivia has not provided the Court with adequate evidence that the alternative condition has been fulfilled.

Article 14

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

1. The consent of a State to be bound by a treaty is expressed by ratification when:
(a) The treaty provides for such consent to be expressed by means of ratification;
(b) It is otherwise established that the negotiating States were agreed that ratification should be required;
(c) The representative of the State has signed the treaty subject to ratification; or
(d) The intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.
2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Άρθρο 14

Συναίνεση προς δέσμευση από μια συνθήκη που εκφράζεται με επικύρωση, αποδοχή ή έγκριση

Η συναίνεση ενός Κράτους προς δέσμευση από μία συνθήκη εκφράζεται μέσω επικύρωσης, όταν:
(α) Η συνθήκη προβλέπει ότι η συναίνεση αυτή εκφράζεται μέσω επικύρωσης·
(β) Διαπιστώνεται άλλως ότι τα Κράτη που συμμετείχαν στις διαπραγματεύσεις συμφώνησαν ότι απαιτείται επικύρωση·
(γ) Ο εκπρόσωπος του Κράτους έχει υπογράψει τη συνθήκη υπό την αίρεση επικύρωσης· ή
(δ) Η πρόθεση του Κράτους να υπογράψει τη συνθήκη υπό την αίρεση επικύρωσης προκύπτει από το πληρεξούσιο του εκπροσώπου της ή εκφράστηκε κατά τη διάρκεια της διαπραγμάτευσης.
2. Η συναίνεση ενός Κράτους προς δέσμευση από μια συνθήκη εκφράζεται με αποδοχή ή έγκριση υπό όρους παρόμοιους με εκείνους που ισχύουν για την επικύρωση.

Article 15

Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:
(a) The treaty provides that such consent may be expressed by that State by means of accession;
(b) It is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
(c) All the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Άρθρο 15

Συναίνεση προς δέσμευση από συνθήκη που εκφράζεται μέσω προσχώρησης

Η συναίνεση προς δέσμευση ενός Κράτους από μια συνθήκη εκφράζεται μέσω προσχώρησης όταν:
(α) Η συνθήκη προβλέπει ότι τέτοια συναίνεση μπορεί να εκφρασθεί από το Κράτος αυτό μέσω προσχώρησης·
(β) Διαπιστώνεται άλλως ότι τα Κράτη που συμμετείχαν στις διαπραγματεύσεις είχαν συμφωνήσει ότι τέτοια συναίνεση μπορεί να εκφρασθεί από το Κράτος αυτό μέσω προσχώρησης· ή
(γ) Όλα τα μέρη συμφώνησαν μεταγενέστερα ότι τέτοια συναίνεση μπορεί να εκφρασθεί από το Κράτος αυτό μέσω προσχώρησης.

Article 16

Exchange or deposit of instruments of ratification, acceptance, approval or accession

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

(a) Their exchange between the contracting States;

(b) Their deposit with the depositary; or

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

Άρθρο 16

Ανταλλαγή ή κατάθεση των εγγράφων επικύρωσης, αποδοχής, έγκρισης ή προσχώρησης

Εκτός εάν η συνθήκη προβλέπει διαφορετικά, τα έγγραφα επικύρωσης, αποδοχής, έγκρισης ή προσχώρησης αποδεικνύουν την συναίνεση ενός Κράτους να δεσμευθεί από συνθήκη, κατά:

(α) Την ανταλλαγή τους μεταξύ των συμβαλλομένων Κρατών·

(β) Την κατάθεση τους στον θεματοφύλακα· ή

(γ) Την γνωστοποίησή τους στα συμβαλλόμενα Κράτη ή στον θεματοφύλακα, εφόσον τούτο συμφωνήθηκε.

Article 17

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

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.
2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Άρθρο 17

Συναίνεση για δέσμευση από μέρος της συνθήκης και επιλογή διαφορετικών διατάξεων

1. Με την επιφύλαξη των άρθρων 19 έως 23, η συναίνεση προς δέσμευση ενός Κράτους από μέρος μίας συνθήκης έχει ισχύ μόνο εάν επιτρέπεται από τη συνθήκη, ή συμφωνούν τα υπόλοιπα συμβαλλόμενα Κράτη.
2. Η συναίνεση προς δέσμευση ενός Κράτους από μία συνθήκη η οποία επιτρέπει την επιλογή μεταξύ διαφορετικών διατάξεων, έχει ισχύ μόνο εάν καθίσταται σαφές για ποιες από τις διατάξεις δίνεται η συναίνεση.

Article 18

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

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

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

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

Άρθρο 18

Υποχρέωση μη αποστέρησης της συνθήκης από το αντικείμενο και τον σκοπό της πριν την θέση της σε ισχύ

Το Κράτος υποχρεούται να απέχει από ενέργειες, οι οποίες θα αποστερούσαν την συνθήκη από το αντικείμενο και τον σκοπό της όταν:

(α) Έχει υπογράψει την συνθήκη ή έχει ανταλλάξει έγγραφα τα οποία συνιστούν συνθήκη υπό αίρεση επικύρωσης, αποδοχής ή έγκρισης, έως ότου εκφράσει ρητώς την πρόθεσή του να μην καταστεί μέρος της συνθήκης· ή

(β) Έχει εκφράσει την συναίνεση προς δέσμευση από την συνθήκη όσο εκκρεμεί η θέση της συνθήκης σε ισχύ και εφόσον η θέση της σε ισχύ δεν καθυστερεί υπέρμετρα.

SECTION 2
RESERVATIONS

ΤΜΗΜΑ 2

ΕΠΙΦΥΛΑΞΕΙΣ

Article 19
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 provides that only specified reservations, which do not include the reservation in question, may be made; or
(*c*) in cases not failing under subparagraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

Άρθρο 19
Διατύπωση επιφυλάξεων

Κάθε Κράτος έχει τη δυνατότητα, κατά την υπογραφή, επικύρωση, αποδοχή, έγκριση [μίας συνθήκης] ή κατά την προσχώρηση σε μία συνθήκη, να διατυπώσει επιφύλαξη, εκτός εάν:
(α) Η επιφύλαξη απαγορεύεται από τη συνθήκη·
(β) Η συνθήκη ορίζει ότι επιτρέπεται να γίνουν μόνο ορισμένες επιφυλάξεις, στις οποίες δεν περιλαμβάνεται η συγκεκριμένη επιφύλαξη· ή
(γ) Στις περιπτώσεις που δεν εμπίπτουν στις υποπαραγράφους (α) και (β), η επιφύλαξη αντίκειται στο αντικείμενο και το σκοπό της συνθήκης.

Article 20

Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
(*b*) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
(*c*) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Άρθρο 20

Αποδοχή επιφυλάξεων και αντιρρήσεις σε αυτές.

1. Επιφύλαξη η οποία ρητά επιτρέπεται από μία συνθήκη δεν απαιτεί μεταγενέστερη αποδοχή από τα άλλα συμβαλλόμενα Κράτη εκτός εάν έτσι ορίζει η συνθήκη.
2. Εάν προκύπτει από τον περιορισμένο αριθμό των Κρατών που μετείχαν στις διαπραγματεύσεις και από το αντικείμενο και τον σκοπό της συνθήκης ότι η εφαρμογή της στην ολότητά της μεταξύ όλων των μερών αποτελεί ουσιώδη προϋπόθεση της συναίνεσης καθενός από αυτά προς δέσμευση από τη συνθήκη, απαιτείται αποδοχή της επιφύλαξης από όλα τα συμβαλλόμενα μέρη.
3. Εάν η συνθήκη αποτελεί έγγραφο σύστασης διεθνούς οργανισμού και, εκτός εάν ορίζεται διαφορετικά, απαιτείται αποδοχή της επιφύλαξης από το αρμόδιο όργανο αυτού του οργανισμού.
4. Στις περιπτώσεις που δεν εμπίπτουν στις προηγούμενες παραγράφους και εκτός εάν η συνθήκη ορίζει διαφορετικά:
(α) Η αποδοχή της επιφύλαξης από άλλο συμβαλλόμενο Κράτος στη συνθήκη καθιστά το επιφυλασσόμενο Κράτος μέρος της συνθήκης στη σχέση του με το άλλο Κράτος εάν η συνθήκη βρίσκεται σε ισχύ ή από τότε που τίθεται σε ισχύ μεταξύ των Κρατών αυτών·
(β) Η αντίρρηση από άλλο συμβαλλόμενο Κράτος σε επιφύλαξη δεν αποκλείει τη θέση σε ισχύ της συνθήκης μεταξύ του Κράτους που διατυπώνει την αντίρρηση και του επιφυλασσόμενου Κράτους εκτός εάν εκφράζεται σαφώς αντίθετη πρόθεση από το Κράτος που διατύπωσε την αντίρρηση·
(γ) Πράξη που εκφράζει τη συναίνεση του Κράτους να δεσμευτεί από τη συνθήκη και εμπεριέχει επιφύλαξη ισχύει από τη στιγμή κατά την οποία ένα τουλάχιστον από τα συμβαλλόμενα μέρη αποδεχτεί την επιφύλαξη.

5. Για τους σκοπούς των παραγράφων 2 και 4 και εκτός εάν προβλέπεται διαφορετικά στη συνθήκη, μία επιφύλαξη θεωρείται ότι έγινε αποδεκτή από ένα Κράτος, εάν αυτό δεν έχει διατυπώσει αντίρρηση ως προς την επιφύλαξη της περιόδου δώδεκα μηνών είτε από τότε που πληροφορήθηκε την επιφύλαξη είτε από την ημερομηνία στην οποία εξέφρασε τη συναίνεση του προς δέσμευση από τη συνθήκη εάν αυτή είναι μεταγενέστερη.

Article 21

Legal effects of reservations and of obligations to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(*a*) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(*b*) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Άρθρο 21

Νομικές συνέπειες των επιφυλάξεων και των αντιρρήσεων στις επιφυλάξεις.

1. Επιφύλαξη που έχει τεθεί σε ισχύ σε σχέση με άλλο συμβαλλόμενο μέρος σύμφωνα με τα άρθρα 19, 20 και 23:

(α) Τροποποιεί κατά την προβλεπόμενη έκταση για το επιφυλασσόμενο Κράτος ως προς τις σχέσεις του με το άλλο συμβαλλόμενο μέρος τις διατάξεις της συνθήκης στις οποίες αναφέρεται η επιφύλαξη· και

(β) Τροποποιεί τις ίδιες διατάξεις κατά την ίδια έκταση για το άλλο συμβαλλόμενο μέρος όσον αφορά στις σχέσεις του με το επιφυλασσόμενο Κράτος.

2. Η επιφύλαξη δεν τροποποιεί τις διατάξεις της συνθήκης για τα άλλα συμβαλλόμενα μέρη στις μεταξύ τους σχέσεις.

3. Όταν ένα Κράτος το οποίο διατύπωσε αντίρρηση σε μία επιφύλαξη δεν αντιτάχθηκε στο να τεθεί η συνθήκη σε ισχύ μεταξύ αυτού και του επιφυλασσόμενου Κράτους, οι διατάξεις στις οποίες αφορά η επιφύλαξη δεν εφαρμόζονται μεταξύ αυτών των δύο Κρατών κατά την έκταση της επιφύλαξης.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

MOL Hungarian Oil and Gas Company Plc v Republic of Croatia (ICSID Case No ARB/13/32) Decision on Respondent Application under ICSID Arbitration Rules 41(5) (2 December 2014)

"48. To take first the Preliminary Objection relating to Articles 26(3) and 10(1), read in conjunction with Annex IA, it will be clear from the discussion above that, as the argument between the Parties has developed, this objection depends in part on a textual interpretation of the treaty provisions in question, in part on the assessment of contextual and purposive elements that might throw light on, or condition, the meaning to be given to the text, and in part again on whether a State's listing in Annex IA is to be understood as a reservation, or should be treated as having the equivalent effects to a reservation, seen within the context of a treaty text that expressly excludes reservations. It would in addition raise the interesting question whether private investors could properly be assimilated to 'the reserving State' for the purposes of applying Article 21(1)(b) of the Vienna Convention on the Law of Treaties.40 (fn.40: "A reservation established with regard to another party in accordance with articles 19,

20 and 23 ... (b) Modifies those provisions to the same extent for that other party in its relations with the reserving State.)”

Article 22

Withdrawal of reservations and objection to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
3. Unless the treaty otherwise provides, or it is otherwise agreed:
(*a*) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;
(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Άρθρο 22

Ανάκληση των επιφυλάξεων και των αντιρρήσεων στις επιφυλάξεις.

1. Εκτός εάν η συνθήκη ορίζει διαφορετικά, μία επιφύλαξη μπορεί να ανακληθεί ανά πάσα στιγμή χωρίς να απαιτείται η συναίνεση του Κράτους που την αποδέχθηκε.
2. Εκτός εάν η συνθήκη ορίζει διαφορετικά, αντίρρηση σε επιφύλαξη μπορεί να ανακληθεί ανά πάσα στιγμή.
3. Εκτός εάν η συνθήκη ορίζει διαφορετικά, ή έχει συμφωνηθεί διαφορετικά:
(α) Η ανάκληση μιας επιφύλαξης παράγει έννομα αποτελέσματα σε σχέση με άλλο συμβαλλόμενο Κράτος μόνο όταν ληφθεί γνωστοποίησή της από το Κράτος αυτό·
(β) Η ανάκληση αντίρρησης σε επιφύλαξη παράγει έννομα αποτελέσματα μόνο όταν ληφθεί γνωστοποίησή της από το Κράτος που διατύπωσε την επιφύλαξη.

Article 23

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

Άρθρο 23

Διαδικασία αναφορικά με τις επιφυλάξεις.

1. Η επιφύλαξη, η ρητή αποδοχή της επιφύλαξης και η αντίρρηση στην επιφύλαξη πρέπει να διατυπώνονται εγγράφως και να κοινοποιούνται στα συμβαλλόμενα Κράτη και σε άλλα Κράτη τα οποία δικαιούνται να καταστούν μέρη στη συνθήκη.
2. Εάν μία επιφύλαξη διατυπωθεί κατά την υπογραφή μίας συνθήκης υπό την αίρεση επικύρωσης, αποδοχής ή έγκρισης, πρέπει να επιβεβαιωθεί επίσημα από το επιφυλασσόμενο Κράτος κατά τη στιγμή που εκφράζει τη συναίνεσή του προς δέσμευση από τη συνθήκη. Σε αυτή την περίπτωση η επιφύλαξη θεωρείται ότι έγινε κατά την ημερομηνία της επιβεβαίωσης.
3. Η ρητή αποδοχή μιας επιφύλαξης ή η αντίρρηση σε αυτή, εφόσον έγιναν πριν την επιβεβαίωση της επιφύλαξης, δεν χρειάζονται επιβεβαίωση.
4. Η ανάκληση μιας επιφύλαξης ή μίας αντίρρησης σε επιφύλαξη πρέπει να διατυπώνονται εγγράφως.

SECTION 3

ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

ΤΜΗΜΑ 3

ΘΕΣΗ ΣΕ ΙΣΧΥ ΚΑΙ ΠΡΟΣΩΡΙΝΗ ΕΦΑΡΜΟΓΗ ΣΥΝΘΗΚΩΝ

Article 24

Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Άρθρο 24

Θέση σε ισχύ

1. Η συνθήκη τίθεται σε ισχύ κατά τρόπο τέτοιο και κατά την ημερομηνία που προβλέπεται σε αυτήν ή όπως συμφωνήσουν τα Κράτη που μετείχαν στις διαπραγματεύσεις.
2. Αν δεν υπάρχει τέτοια διάταξη ή συμφωνία, η συνθήκη τίθεται σε ισχύ όταν η συναίνεση προς δέσμευση από αυτήν έχει δοθεί από όλα τα Κράτη που μετείχαν στις διαπραγματεύσεις.
3. Όταν η συναίνεση ενός Κράτους προς δέσμευση από τη συνθήκη θεμελιώνεται σε μεταγενέστερη ημερομηνία από τη θέση της σε ισχύ, η συνθήκη τίθεται σε ισχύ ως προς το Κράτος αυτό από την εν λόγω ημερομηνία, εκτός εάν ορίζεται διαφορετικά στη συνθήκη.
4. Οι διατάξεις της συνθήκης που ρυθμίζουν την επιβεβαίωση της γνησιότητας του κειμένου της, την θεμελίωση της συναίνεσης των Κρατών προς δέσμευση από τη συνθήκη, τον τρόπο και την ημερομηνία θέσης της σε ισχύ, τις επιφυλάξεις, τα καθήκοντα του θεματοφύλακα όπως και άλλα ζητήματα που προκύπτουν αναγκαστικά πριν τη θέση της σε ισχύ, εφαρμόζονται από τη στιγμή της υιοθέτησης του κειμένου της.

Article 25

Provisional Application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
(*a*) the treaty itself so provides; or
(*b*) the negotiating States have in some other manner so agreed.
2.Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

Άρθρο 25

Προσωρινή Εφαρμογή

1. Συνθήκη ή μέρος της συνθήκης εφαρμόζεται προσωρινά όσο εκκρεμεί η θέση της σε ισχύ εάν:
(α) Αυτό προβλέπεται από την ίδια τη συνθήκη· ή
(β) Τα Κράτη που μετείχαν στις διαπραγματεύσεις ούτως συμφώνησαν με κάποιο τρόπο.
2. Εκτός εάν η συνθήκη ορίζει διαφορετικά ή τα Κράτη που μετείχαν στις διαπραγματεύσεις συμφώνησαν διαφορετικά, η προσωρινή εφαρμογή της συνθήκης ή μέρους αυτής ως προς ένα Κράτος τερματίζεται, εάν το Κράτος αυτό κοινοποιήσει στα υπόλοιπα Κράτη μεταξύ των οποίων η συνθήκη εφαρμόζεται προσωρινώς, την πρόθεσή του να μην καταστεί συμβαλλόμενο μέρος στη συνθήκη.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES
PERMANENT COURT OF ARBITRATION
ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Bernhard von Pezold and others v Republic of Zimbabwe (ICSID Case No ARB/10/15) Award (28 July 2015)
"341. Under Article 25 of the Vienna Convention, there is no particular form which the agreement of the German Government should take. A United Nations ("UN") Report on the provisional application of treaties makes it clear that the determinative factor here is the intention of the parties. It is clear from Germany's response, the fact that it assisted in drafting the original note, and from its subsequent conduct, that agreement was provided. An example of such conduct is the letter from the German Ambassador to the German Ministry of Affairs on 19 September 1996 to advise that the "exchange of notes" regarding provisional application of the German BIT had been completed. This is strong evidence that Germany considered that the German BIT was to come into effect prior to the date of ratification."

PART III

OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

ΜΕΡΟΣ ΙΙΙ
ΤΗΡΗΣΗ, ΕΦΑΡΜΟΓΗ ΚΑΙ ΕΡΜΗΝΕΙΑ ΣΥΝΘΗΚΩΝ

SECTION 1
OBSERVANCE OF TREATIES

ΤΜΗΜΑ 1
ΤΗΡΗΣΗ ΣΥΝΘΗΚΩΝ

Article 26
"Pacta Sunt Servanda"

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

Άρθρο 26
"Pacta sunt servanda"

Κάθε συνθήκη σε ισχύ, δεσμεύει τα συμβαλλόμενα σε αυτήν μέρη και πρέπει να εκτελείται με καλή πίστη.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Jurisdictional Immunities of the State (Germany v Italy: Greece intervening) Judgment [2012] ICJ Rep 99

"138. […] As the Court has stated in previous cases (see, in particular, Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 267, para. 150), as a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed. Accordingly, while the Court may order the State responsible for an internationally wrongful act to offer assurances of non-repetition to the injured State, or to take specific measures to ensure that the wrongful act is not repeated, it may only do so when there are special circumstances which justify this, which the Court must assess on a case-by-case basis."

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) *and Construction of a Road in Costa Rica along the San Juan River* (Nicaragua v Costa Rica) (Merits) [2015] ICJ Rep 665

"141. As the Court noted in the Navigational and Related Rights case, "there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed" and therefore assurances and guarantees of non-repetition will be ordered only "in special circumstances." While Nicaragua failed to comply with the obligations under the 2011Order, it is necessary also to take into account the fact that Nicaragua later complied with the requirements, stated in

the Order of 22 November 2013, to "refrain from any dredging and other activities in the disputed territory" and to "cause the removal from the disputed territory of any personnel, whether civilian, police or security" (I.C.J. Reports 2013, p. 369, para.59). It is to be expected that Nicaragua will have the same attitude with regard to the legal situation resulting from the present Judgment, in particular in view of the fact that the question of territorial sovereignty over the disputed territory has now been resolved."

PERMANENT COURT OF ARBITRATION
South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) Case No 2013-19, Award, July 2, 2016
"1171. In the Tribunal's view, such a duty is inherent in the central role of good faith in the international legal relations between States. Article 26 of the Vienna Convention on the Law of Treaties recognises this when it provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." This obligation is no less applicable to the provisions of a treaty relating to dispute settlement. […]
1195. All of these propositions fall within the basic rule of "pacta sunt servanda", expressed in Article 26 of the Vienna Convention on the Law of Treaties as: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." In essence, what the Philippines is requesting is a declaration from the Tribunal that China shall do what it is already obliged by the Convention to do."

Chevron Corporation (USA) and Texaco Petroleum Corporation (USA) v Republic of Ecuador, Case No 2009-23 Second Partial Award on Track II, August 30, 2018
"7.83. Under international law, as codified in Article 26 the Vienna Treaty on the Law of Treaties (the "VCLT"), parties are required to act in good faith in the performance of their obligations.
7.84. Article 26 of the VCLT provides: "Every treaty in force is binding upon the parties to it and must be performed in good faith. […]
7.106. Applying Article 26 of the VCLT and customary international law, the Tribunal decides that the Parties are bound to act in good faith in the exercise of their rights and the performance of their respective obligations under the Arbitration Agreement derived from Article VI of the Treaty. That duty of good faith precludes clearly inconsistent statements, deliberately made for one party's material advantage or to the other's material prejudice, that adversely affect the legitimacy of the arbitral process. In other words, no party to this arbitration can 'have it both ways' or 'blow hot and cold', to affirm a thing at one time and to deny that same thing at another time according to the mere exigencies of the moment."

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Electrabel S.A. v Republic of Hungary (ICSID Case No ARB/07/19) Decision on Jurisdiction, Applicable Law and Liability (30 November 2012)
"4.125. From the perspective of international law, it does not matter whether such application within a national legal order take effect directly or indirectly. The Tribunal recognises that international law is applied within national legal orders more or less directly in monist countries and by reception in dualist countries. As a result, in many countries, international law is considered part of national law. As regards treaties, by virtue of Article 26 of the Vienna Convention ("Pacta sunt servanda"), States have a duty to perform in good faith obligations binding on them under international law. This duty requires, amongst other matters, an obligation to introduce treaties into their national legal order."

Suez, Sociedad General de Aguas de Barcelona S.A. and Vivendi Universal S.A v Argentine Republic (ICSID Case No ARB/03/19) Award (9 April 2015)
"24. In its Decision on Liability, the Tribunal determined that the Respondent failed to comply with its treaty obligation to accord fair and equitable treatment to the investments of the Claimants. Pursuant to Article 26 (Pacta Sunt Servanda) of the Vienna Convention on the Law of Treaties, a provision that embodies a fundamental principle of customary international law, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."

Quiborax S.A. and Non-Metallic Minerals S.A. v Plurinational State of Bolivia (ICSID Case No ARB/06/2) Award (16 September 2015)
"589. The Claimants' allegations refer to different facets of the duty to arbitrate in good faith. […] Article 26 of the VCLT provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." As stated by the ICJ in the Nuclear Tests case, "[o]ne of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. [...] the very rule of pacta sunt servanda in the law of treaties is based on good faith […].
590. In turn, Article X of the BIT contains the Contracting State's agreement with respect to the settlement of investor-state disputes, including the agreement to arbitrate under the ICSID Convention, to which an investor adheres by initiating arbitration proceedings. This commitment to arbitrate must be complied with in good faith in accordance with Article 26 of the VCLT. In other words, the Parties must arbitrate in good faith. […]
592. The principle of good faith involves the duty not to perform any act that would defeat the object and purpose of the obligation that has been undertaken by the parties, even if the act itself is not expressly prohibited by the provisions of the treaty. As emphasized by the ICJ in Gabcikovo-Nagymaros, "[t]he principle of good faith obliges the parties to apply [the obligation] in a reasonable way and in such a manner that its purpose can be realized."
593. The Respondent's obligation to arbitrate provided by Article X of the BIT thus implies the duty not to act in a manner that will undermine or frustrate the arbitral process. This includes, for instance, the duty to refrain from harming the procedural integrity of the arbitration or aggravating the dispute. Thus, actions directed against the efficient conduct of the arbitral proceedings may breach this duty even if such action is not prohibited by the express terms of the BIT or the ICSID Convention.
594. Under the circumstances, the Tribunal is not convinced that it should issue a declaration of breach of the duty to arbitrate in good faith. […]
595. Similarly, the Tribunal does not find that the Respondent has breached the duty of good faith through its procedural conduct in this arbitration. It is the Respondent's right to submit the factual allegations and legal arguments of its choice, and it is the Tribunal's duty to accept or reject them on their merits."

Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v Argentine Republic (ICSID Case No ARB/09/01) Award (21 July 2017)
"477. The Vienna Convention confirms that every treaty in force is binding upon the parties and obliges parties to perform them in good faith. (see fn.451 Vienna Convention, Art. 26.)"

Mobil Investments Canada Inc. v Canada (ICSID Case No ARB/15/6) Decision on Jurisdiction and Admissibility (13 July 2018)
"165. The Tribunal considers that, as a matter of general international law the position is quite straightforward. NAFTA Article 1106(1) prohibits Canada from imposing or enforcing measures which are contrary to its terms. That obligation is a continuing one and, like any

treaty obligation, must be performed in good faith. (see fn.78: Article 26, Vienna Convention on the Law of Treaties, 1969, which is entitled "Pacta sunt Servanda", provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith.)"

Vattenfall AB and others v Federal Republic of Germany (ICSID Case No ARB/12/12), Decision on the Achmea Issue (31 August 2018)
"155. The preamble of the VCLT emphasises the universal recognition of "the principles of free consent and of good faith and the *pacta sunt servanda* rule", also contained in Article 26 VCLT.
156. When States enter into international legal obligations under a multilateral treaty, *pacta sunt servanda* and good faith require that the terms of that treaty have a single consistent meaning. […]."

EUROPEAN COURT OF HUMAN RIGHTS

Husayn (Abu Zubaydah) v Poland, App No 7511/13 (ECHR, 24 July 2014)
"358. […] The Convention is an international treaty which, in accordance with the principle of pacta sunt servanda codified in Article 26 of the Vienna Convention on the Law of Treaties, is binding on the Contracting Parties and must be performed by them in good faith."

Sidabras and others v Lithuania, App Nos 50421/08 and 56213/08 (ECHR, 23 June 2015)
"73. Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Alekseyev and others v Russia, App Nos 55508/07 and 29520/09 (ECHR, 27 November 2018)
"28. In this connection, the Court emphasises the obligation on States to perform treaties in good faith, as noted, in particular, in the third paragraph of the preamble and in Article 26 of the 1969 Vienna Convention on the Law of Treaties (see Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2) [GC], no. 32772/02, § 37, ECHR 2009)."

Abu Zubaydah v Lithuania, App No 46454/11 (ECHR, 31 May 2018)
"220. Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Al Nashiri v Romania, App No 33234/12 (ECHR, 31 May 2018)
"198. Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

INTER-AMERICAN COURT OF HUMAN RIGHTS

Osorio Rivera and Family Members v Peru (Preliminary objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 274 (26 November 2013)
"30. Furthermore, the same principle reveals that, from the time that a treaty enters into force, the States parties can be required to comply with the obligations it contains in relation to any act that is subsequent to that date. This corresponds to the principle of pacta sunt servanda, according to which "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." In this regard, it is necessary to distinguish between instantaneous acts and acts of a continuing or permanent nature. The latter extend "over the entire period during which the act continues and is not in conformity with the international obligation." Owing to their characteristics, once the treaty enters into force, those continuing or permanent acts which persist after that date can generate international obligations for the State party, without this signifying a violation of the principle of the non-retroactivity of treaties. (see fn. 30: Article 26 of the Vienna Convention on the Law of Treaties. Similarly, cf.

Case of Loayza Tamayo. Compliance with judgment. Order issued by the Inter-American Court on November 17, 1999. Series C No. 60, para. 7, and Case of Radilla Pacheco v. Mexico, supra, para. 20.)"

COURT OF JUSTICE OF THE EUROPEAN UNION

Case C-613/12 *Helm Düngemittel GmbH v Hauptzollamt Krefeld* [2014] Judgment (Third Chamber

"5. Article 26 of the Vienna Convention, entitled 'Pacta sunt servanda', provides: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Article 27

Internal law and observance of treaties

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

Άρθρο 27

Εσωτερικό δίκαιο και τήρηση των συνθηκών

Συμβαλλόμενο μέρος δεν μπορεί να επικαλεσθεί τις διατάξεις του εσωτερικού του δικαίου ως λόγο για τη μη εκτέλεση της συνθήκης. Ο κανόνας αυτός ισχύει με την επιφύλαξη του άρθρου 46.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) Judgment [2012] ICJ Rep 422

"113. The Court observes that, under Article 27 of the Vienna Convention on the Law of Treaties, which reflects customary law, Senegal cannot justify its breach of the obligation provided for in Article 7, paragraph 1, of the Convention against Torture by invoking provisions of its internal law, in particular by invoking the decisions as to lack of jurisdiction rendered by its courts in 2000 and 2001, or the fact that it did not adopt the necessary legislation pursuant to Article 5, paragraph 2, of that Convention until 2007."

PERMANENT COURT OF ARBITRATION

ECE Projektmanagement International GmbH and Kommanditgesellschaft PANTA Achtundsechzigste Grundstücksgesellschaft mbH & Co v Czech Republic, Case No 2010-5, Award, September 19, 2013

"4.748. Finally, as the Claimants' claims of breach of the standard of fair and equitable treatment rely heavily on the alleged illegality of some of the decisions adopted by the domestic authorities, the Tribunals observes it is well-established that a breach of domestic law does not, without more, result in a breach of international law. As expressed by a Chamber of the International Court of Justice in ELSI: "Compliance with municipal law and compliance with the provisions of a treaty are different questions. What is a breach of a treaty may be lawful under municipal law and what is unlawful under municipal law may be fully innocent of violation of a treaty provision." The Chamber later observed: "[t]he fact that an act of a public authority may have been unlawful in municipal law does not necessarily mean that that act was unlawful in international law, as a breach of treaty or otherwise."

4.749. That forms part of the more general principle, recognized in Article 27 of the Vienna Convention on the Law of Treaties, […]."

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v Argentine Republic (ICSID Case No ARB/03/23) Award (11 June 2012)

"894. Article 27 (―Internal law and observance of treaty) of the 1969 Vienna Convention prescribes as follows: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46. […]

905. The Tribunal finds support in its view from the provisions of Article 27 of the 1969 Vienna Convention, which precludes a state from ―invok[ing] the provisions of its internal law as justification for its failure to perform."

Electrabel S.A. v Republic of Hungary (ICSID Case No ARB/07/19) Decision on Jurisdiction, Applicable Law and Liability (30 November 2012)
"3.40. Article 27 VCLT ("Internal law and observance of treaties") provides: "Internal law and observance of treaties: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

Perenco Ecuador Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (ICSID Case No ARB/08/6) Decision on the Remaining Issues of Jurisdiction and on Liability (12 September 2014)
"534. The Tribunal therefore finds that the applicable law for the purposes of this claim is Ecuadorian law (as already considered by the Tribunal) and the Treaty. In the event that there is a conflict between the two, on the basis of well-established principle recognised in international judicial and arbitral case law as well as in Article 27 of the Vienna Convention on the Law of Treaties and Article 3 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, international law prevails."

Vigotop Limited v Hungary (ICSID Case No ARB/11/22) Award (1 October 2014)
"325. According to Claimant's legal expert Prof. Schrijver, it is well established that "the question whether a measure amounts to a violation of a State's international obligation is one arising irrespective of the position under domestic law." Prof. Schrijver refers to Article 27 of the Vienna Convention on the Law of Treaties and Article 3 of the Articles on State Responsibility for Internationally Wrongful Acts, which provides:
"The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. […]
327. Having considered the relevant case law cited by the Parties and also taking into account Prof. Schrijver's opinion, the Tribunal is of the view that the question whether Respondent's termination of the Concession Contract was in accordance with both its terms and Hungarian law is not dispositive of the Tribunal's analysis whether an expropriation occurred. The Tribunal rather agrees with the majority of the precedents and Prof. Schrijver that, even though a finding that the termination violated the terms of the Concession Contract or provisions of Hungarian law may be relevant to its expropriation analysis, such a finding is neither necessary nor sufficient to conclude that Article 4 of the Treaty was violated."

Venezuela Holdings B.V. and others (formerly Mobil Corporation and others) v Bolivarian Republic of Venezuela (ICSID Case No ARB/07/27) Award (9 October 2014)
"225. The Tribunal disagrees with this position. The Tribunal recalls that it is a fundamental principle of international law that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Under this principle, international obligations arising from a treaty cannot be discarded on the grounds of national law. Among the legal systems on which the Award "shall be based" pursuant to Article 9(5) of the Treaty, the Tribunal has no doubt in concluding that this issue must be governed by international law. Consequently, the Eighteenth and Twentieth Conditions cannot exempt or excuse the Respondent from its obligations under the Treaty or under customary international law. Bearing this in mind, the Tribunal has considered the effect of the Eighteenth and Twentieth Conditions of the Cerro Negro Framework of Conditions in the section on quantum below."

Caratube International Oil Company LLP and Devincci Salah Hourani v Republic of Kazakhstan (ICSID Case No ARB/13/13) Decision on the Claimants Request for Provision Measures (4 December 2014)
"121. For the Tribunal, this implies that the requested measures be "appropriate" in the circumstances of the individual case to achieve their purpose. This includes a balancing of the Parties' respective interests at stake. The fact that the Respondent is a State is relevant in this regard. Indeed, any party to an arbitration should adhere to some procedural duties, including to conduct itself in good faith; moreover, one can expect from a State to adhere in that very capacity, to at least the same principles and standards, in particular to desist from any conduct in this Arbitration that would be incompatible with the Parties' duty of good faith,22 to respect equality and not to aggravate the dispute. (see fn.22: See, e.g., Articles 18 and 27 of the Vienna Convention on the law of treaties of 23 May 1969.)"

Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador (ICSID Case No ARB/06/11) Decision on Annulment (2 November 2015)
"84. The second argument must be dismissed for total lack of merit: the Tribunal was right in dismissing the Arbitrability Objection and thus assuming jurisdiction with respect to claims related the Republic: -Disregards the basic principle of international law that a State cannot invoke its domestic law, including its constitutional provisions, for the purpose of avoiding treaty obligations. (see fn.65: See Articles 27 and 46 VCLT, ratified by Ecuador (without reservation to Article 27). It is clear from these international law principles, which codify existing customary international law on the subject, that Ecuador cannot invoke its domestic law for the purpose of avoiding ICSID jurisdiction under the US-Ecuador BIT. The same principle applies even where constitutional provisions are relied upon (see the judgement of the PCIJ Polish Nationals in Danzig, p. 24: "It should however be observed that [...] a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force").
See also IBM (Jurisdiction Decision) at 72:
"International treaties establish norms of conduct between and for the States, the mandatory character of which cannot be avoided, the more since current International Law has the tendency to have its norms to prevail even over the provisions of the Political Constitutions themselves. It appears as such in doctrine and constitutional texts, but also in jurisprudence on human rights and community law."

Venezuela Holdings B.V. and others (formerly Mobil Corporation and others) v Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/27) Decision on Annulment (9 March 2017)
"161. As the Committee has already noted, perhaps the most troublesome finding of the Tribunal, for the purposes of these annulment proceedings, is its determination in paragraph 225 of the Award set out in paragraph 150 above. In crude terms, the Tribunal here decides that national (internal) law may not be invoked to avoid international obligations, whether arising under treaty or otherwise. The general principle is indeed a fundamental one, and its application in respect of treaties is universally accepted,181 as it is more generally. (see fn.181: See article 27 of the Vienna Convention on the Law of Treaties 1969 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. ...").
162. The Tribunal's finding on this point is not altogether easy to follow. That the Tribunal sets aside the terms of the Association Agreement (based as they were on the Congressional Conditions) as directly binding on Venezuela for the purposes of the arbitral proceedings is understandable enough if it should be taken as another way of saying that the governing law for the assessment of compensation was the BIT. The finding in paragraph 225, however

presupposes the existence of a conflict of some kind between Venezuela's internal law and its international obligations, and it is both the nature of that 'internal law' which the Tribunal had in mind and the nature of the supposed conflict which trouble the Committee. On the one hand, it appears to the Committee that at no stage has Venezuela sought to invoke any provision of its internal law as standing in the way of paying compensation for the expropriation as required by the BIT; as indicated above, the obligation to pay compensation has always been acknowledged, and the Tribunal finds expressly that the expropriation was not in itself unlawful or in breach of Venezuela's treaty obligations. By the same token, on the other hand, the Tribunal expressly finds that the offer of compensation did not in itself render the underlying expropriation a breach of the BIT – and this must carry with it the consequence that the Tribunal considered that the offer made, based as it was on the Congressional Conditions and Association Agreement, was not incompatible with the Treaty. The Tribunal says specifically that it "finds that the evidence submitted does not demonstrate that the proposals made by Venezuela were incompatible with the requirement of 'just' compensation of Article 6(c) of the BIT." If that is so, however, it becomes very hard to see in what way the invocation of the Congressional Conditions and Association Agreement can have been thought to be equivalent to an attempt to make the provisions of Venezuelan law prevail over Venezuela's international obligations. For that reason alone, the Committee will approach with caution any suggestion that the exclusion of the Congressional Conditions and Association Agreement as in themselves determinative of the question of the quantum of compensation also made the Price Cap irrelevant to the determination of the quantum by other means, i.e. those provided for in the BIT."

Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v Argentine Republic (ICSID Case No ARB/09/01) Award (21 July 2017)
"477. Further, parties to treaties "may not invoke the provisions of [their] internal law as justification for [their] failure to perform a treaty."452 Accordingly, Respondent may not avoid its treaty obligations owed to Claimants by relying on its compliance with its internal laws, regulations or administrative acts. (see fn.452 Vienna Convention, Art. 27)"

EUROPEAN COURT OF HUMAN RIGHTS
Janowiec and others v Russia, App Nos 55508/07 and 29520/09 (ECHR, 21 October 2013)
"196. The applicants submitted that a long-standing principle of customary international law established that no internal rule, even of constitutional rank, could be invoked as an excuse for non-observance of international law (they referred to the case-law of the Permanent Court of International Justice and of the International Court of Justice (ICJ)). This principle was codified in Article 27 of the Vienna Convention on the Law of Treaties as an extension of the more general pacta sunt servanda principle, and had been frequently invoked in the jurisprudence of international courts and quasi-judicial bodies including the United Nations Human Rights Committee, the International Criminal Tribunal for the former Yugoslavia (ICTY), the Inter-American Court on Human Rights, the African Commission on Human and Peoples' Rights, and arbitration tribunals.
211. […] Pursuant to Article 27 of the Vienna Convention, the provisions of internal law may not be invoked as justification for a failure by the Contracting State to abide by its treaty obligations. In the context of the obligation flowing from the text of Article 38 of the Convention, this requirement means that the respondent Government may not rely on domestic legal impediments, such as the absence of a special decision by a different agency of the State, to justify a failure to furnish all the facilities necessary for the Court's examination of the case. It has been the Court's constant position that Governments are answerable under the Convention for the acts of any State agency since what is in issue in all cases before the Court

is the international responsibility of the State (see Lukanov v. Bulgaria, 20 March 1997, § 40, Reports 1997II)."

Anchugov and Gladkov v Russia, App Nos 11157/04 and 15162/05 (ECHR, 4 July 2013)
"108. The Court further notes the Government's argument that the present case is distinguishable from Hirst (no. 2), as in Russia a provision imposing a voting bar on convicted prisoners is laid down in the Constitution – the basic law of Russia adopted following a nationwide vote – rather than in an "ordinary" legal instrument enacted by a parliament, as was the case in the United Kingdom (see paragraph 85 above). In that connection the Court reiterates that, according to its established case-law, a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations (see, among other authorities, Nada, cited above, § 168). As has been noted in paragraph 50 above, Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a member State's "jurisdiction" – which is often exercised in the first place through the Constitution – from scrutiny under Convention. The Court notes that this interpretation is in line with the principle set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties."

Pejčić v Serbia, App No 34799/07 (ECHR, 8 October 2013)
"57. As regards the applicability of the Succession Agreement, the Court notes that the Ministry of Foreign Affairs of the then Serbia and Montenegro, as well as the domestic courts, expressed the view that it should be directly applicable in granting requests for reinstatement of the payment of military pensions (see paragraph 31 above). In this respect the Court notes that under the Serbian Constitution international agreements have precedence in terms of their legal effects over domestic statues (see paragraph 27 above). Furthermore, according to international law, including the Vienna Convention on the Law of Treaties, Serbia cannot hinder its obligation to perform an international treaty by citing provisions of its internal law (see paragraph 34 above)."

Berkovich and others v Russia, App Nos 5871/07, 61948/08, 25025/10, 19971/12, 46965/12, 75561/12, 73574/13, 504/14, 31941/14, and 45416/14 (ECHR, 27 March 2018)
"112. The applicants submitted that Russia's failure to implement its accession commitment relating to the lifting of the travel ban on individuals aware of State secrets amounted to a structural problem. That problem had been highlighted in the Court's judgments in the Bartik and Soltysyak cases, which had not been executed to date as regards general measures. The situation had not changed after the adoption by the Russian Constitutional Court of judgment no. 14-P, dated 7 June 2012, which had upheld the validity of the travel ban. The applicants emphasised that the accession commitments were considered as conditions sine qua non for Russia's membership of the Council of Europe and that the Parliamentary Assembly regarded the travel restrictions as incompatible with the status of a member State. For many years Russia had taken no steps to amend the relevant legal provisions or practice and such a long period was clearly in breach of its undertaking to abolish the travel restrictions "with immediate effect". The impugned restrictions affected hundreds of thousands of Russian citizens who had been waiting for too long for their abolition. Under Article 27 of the Vienna Convention on the Law of Treaties, a party could not invoke the provisions of its internal law as justification for its failure to perform a treaty, and Russia had to abide by its commitments."

Case of Abu Zubaydah v Lithuania, App No 46454/11 (ECHR, 31 May 2018)

"220. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Case of Al Nashiri v Romania, App No 33234/12 (ECHR, 31 May 2018)
"198. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

INTER-AMERICAN COURT OF HUMAN RIGHTS
Veliz Franco et al. v Guatemala (Preliminary objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 277 (19 May 2014)
"180. With regard to the alleged impediments to the correct implementation of certain procedures at the time of the events (supra para. 171), the Court recalls that it is a basic principle of international law, supported by international jurisprudence, that States are bound to observe their treaty-based obligations in good faith (pacta sunt servanda) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, States may not invoke the provisions of their internal law as justification for failure to do so. Hence, the State cannot excuse failure to comply with its obligation to investigate with the due diligence by affirming that, at the time of the events, there were no laws, procedures or measures for conducting the initial investigative measures properly in keeping with the standards of international law that are evident in the applicable treaties in force at the time of the events, and that this Court has indicated in its case law (infra para. 188 and 189). Nevertheless, the Court has noted that Guatemala has made progress, with the laws now in force and the creation of several agencies, such as the INACIF, which have allowed measures to be taken in a scientific and technical manner (infra para. 267)."

Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-American Court of Human Rights Series A No 21 (19 August 2014)
"51. The Inter-American Court's mandate consists, essentially, in the interpretation and application of the American Convention or other treaties for which it has jurisdiction, in order to determine, in accordance with both treaty-based and customary international law, the international responsibility of the State under international law. (see fn.52: Article 27 (Internal law and observance of treaties) of the Vienna Convention on the Law of Treaties provides that: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.).
145. In order to deal with this issue, the central purpose of which is the interpretation of the right to personal liberty recognized in Articles 7 of the American Convention and XXV of the Declaration, it is pertinent to establish that when referring to the word "detention," the question employs it in a broad sense, equivalent to deprivation of liberty. Thus, the Court will proceed to use the concept of deprivation of liberty, because it is more inclusive. In this regard, the Court adopts a broad approach, in keeping with the development of international human rights law and autonomous from the provisions of national legislation, in the understanding that the particular element that allows a measure to be identified as one that deprives a person of liberty, regardless of the specific name it is given at the local level, is the fact that the person, in this case the child, cannot or is unable to leave or abandon at will the place or establishment where she or he has been placed. Hence, any situation or measure that is characterized by this definition will turn operational the associated guarantees (infra Chapter XII). (fn.264: In particular, considering the provisions of Article 27 of the Vienna Convention on the Law of Treaties, which refers to internal law and the observance of treaties, and establishes that "[a]

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

Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights) Advisory Opinion OC-24/17, Inter-American Court of Human Rights Series A No 24 (24 November 2017)
"139. The rules of the Vienna Convention on the Law of Treaties that serve as a basis for the control of conventionality exercised by the Court are, mainly, Article 26. which enshrines the principle pacta sunt servanda, the first sentence of Article 27, which establishes the inadmissibility of invoking domestic law to stop complying with the agreement and article 31.1, which establishes, as a fundamental rule, the interpretation of treaties according to good faith, the terms of the treaty, the context of the treaties and their purpose and end."

AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS
Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R. Mtikila v United Republic of Tanzania, App Nos 009 & 011/2011 (14 June 2013)
"108. Furthermore, it is the view of the Court that the limitation imposed by the Respondent ought to be in consonance with international standards, to which the Respondent is expected to adhere. This is in line with the principle set out in Article 27 of the Vienna Convention on the Law of Treaties which provides that: "A party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty. This rule is without prejudice to article 46."

SECTION 2
APPLICATION OF TREATIES

ΤΜΗΜΑ 2
ΕΦΑΡΜΟΓΗ ΣΥΝΘΗΚΩΝ

Article 28
Non-retroactivity of treaties

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

Άρθρο 28
Μη αναδρομική ισχύς συνθηκών

Εκτός εάν προκύπτει από τη συνθήκη διαφορετική πρόθεση ή θεμελιώνεται άλλως, οι διατάξεις της συνθήκης δεν δεσμεύουν ένα συμβαλλόμενο μέρος σε σχέση με οποιαδήποτε πράξη ή γεγονός το οποίο έλαβε χώρα πριν την ημερομηνία θέσης της συνθήκης σε ισχύ ή οποιαδήποτε κατάσταση που έπαυσε να υφίσταται, πριν την ημερομηνία θέσης της συνθήκης σε ισχύ αναφορικά με αυτό το συμβαλλόμενο μέρος.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES
INTERNATIONAL COURT OF JUSTICE

Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) Judgment [2012] ICJ Rep 422

"100. However, the obligation to prosecute the alleged perpetrators of acts of torture under the Convention applies only to facts having occurred after its entry into force for the State concerned. Article 28 of the Vienna Convention on the Law of Treaties, which reflects customary law on the matter, provides: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of that treaty with respect to that party." The Court notes that nothing in the Convention against Torture reveals an intention to require a State party to criminalize, under Article 4, acts of torture that took place prior to its entry into force for that State, or to establish its jurisdiction over such acts in accordance with Article 5. Consequently, in the view of the Court, the obligation to prosecute, under Article 7, paragraph 1, of the Convention does not apply to such acts. […]

102. The Court concludes that Senegal's obligation to prosecute pursuant to Article 7, paragraph 1, of the Convention does not apply to acts alleged to have been committed before the Convention entered into force for Senegal on 26 June 1987. […]

104. The Court considers that Belgium has been entitled, with effect from 25 July 1999, the date when it became party to the Convention, to request the Court to rule on Senegal's compliance with its obligation under Article 7, paragraph 1. In the present case, the Court notes that Belgium invokes Senegal's responsibility for the latter's conduct starting in the year 2000, when a complaint was filed against Mr. Habré in Senegal (see paragraph 17 above)."

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43

"95. The Court considers that a treaty obligation that requires a State to prevent something from happening cannot logically apply to events that occurred prior to the date on which that State became bound by that obligation; what has already happened cannot be prevented. Logic, as well as the presumption against retroactivity of treaty obligations enshrined in Article 28 of the Vienna Convention on the Law of Treaties, thus points clearly to the conclusion that the obligation to prevent genocide can be applicable only to acts that might occur after the Convention has entered into force for the State in question. Nothing in the text of the Genocide Convention or the *travaux préparatoires* suggests a different conclusion. Nor does the fact that the Convention was intended to confirm obligations that already existed in customary international law. A State which is not yet party to the Convention when acts of genocide take place might well be in breach of its obligation under customary international law to prevent those acts from occurring but the fact that it subsequently becomes party to the Convention does not place it under an additional treaty obligation to have prevented those acts from taking place. […]

99. In arguing that some of the substantive obligations imposed by the Convention are retroactive, Croatia focused upon the obligations to prevent and punish genocide. It is, however, the responsibility of a State under the Convention for the commission of acts of genocide that lies at the heart of Croatia's claim. The Court considers that in this respect also the Convention is not retroactive. To hold otherwise would be to disregard the rule expressed in Article 28 of the Vienna Convention on the Law of Treaties. There is no basis for doing so in the text of the Convention or in its negotiating history.

100. The Court thus concludes that the substantive provisions of the Convention do not impose upon a State obligations in relation to acts said to have occurred before that State became bound by the Convention."

PERMANENT COURT OF ARBITRATION

Mesa Power Group, LLC v Government of Canada Case No. 2012-17, Award, March 24, 2016

"325. The scope of application so defined limits the Tribunal's jurisdiction for the obvious reason that the latter derives from the dispute settlement provisions embodied in Chapter 11. Consequently, there is no jurisdiction if disputed measures are not "relating to investors" or to "investments of an investor." In addition to these express provisions of Chapter 11, the same conclusion arises as a general matter from the principle of non- retroactivity of treaties. (see fn.69 See Article 28 of the VCLT. See also Article 13 of the ILC Articles.)"

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Pac Rim Cayman LLC. v Republic of El Salvador (ICSID Case No ARB/09/12) Decision on Jurisdictional Objections (1 June 2012)

"2.103. The general principle of non-retroactivity in the law of international treaties, unless there is a specific indication to the contrary, is well established. This principle is embodied in CAFTA‟s Article 10.1 (cited in the Annex to Part 1 above). It is codified in Article 28 of the Vienna Convention on the Law of Treaties, which provides: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party." In its 1966 Commentaries to the Draft Articles of the Law of Treaties, the International Law Commission stated: "There is nothing to prevent the parties from giving a treaty, or some of its provisions, retroactive effect if they think fit. It is essentially a question of their intention. The general rule however is that a treaty is not to be treated as intended to have retroactive effects unless such an intention is expressed

in the treaty or was clearly to be implied from its terms." It would be possible to add to these legal materials; but it is unnecessary to do so given that this general principle is not materially disputed by the Parties.
2.104. Where there is an alleged practice characterised as a continuous act (as determined above by the Tribunal) which began before 13 December 2007 and continued thereafter, this Tribunal would have jurisdiction *ratione temporis* over that portion of the continuous act that lasted after that date, regardless of events or knowledge by the Claimant before 13 December 2007. The Tribunal concludes that this solution is different from that reached in its analysis of the Abuse of Process issue, as here explained."

Toto Costruzioni Generali S.p.A. v Republic of Lebanon (ICSID Case No ARB/07/12) Award (7 June 2012)
"58. As a general rule, treaties do not apply retroactively. (see fn.22: Vienna Convention on the Law of Treaties, Article 28.)"

Lao Holdings N.V. v Lao People's Democratic Republic I (ICSID Case No ARB(AF)/12/6) Decision on Jurisdiction (21 February 2014)
"114. The general principle of non-retroactivity is expressed in Article 28 of the Vienna Convention on the Law of Treaties as follows:
"Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

Renée Rose Levy and Gremcitel S.A. v Republic of Peru (ICSID Case No ARB/11/17) Award (9 January 2015)
"146. In other words, the Treaty must be in force and the national or company must have already made its investment when the alleged breach occurs, for the Tribunal to have jurisdiction over a breach of that Treaty's substantive standards affecting that investment.
147. This conclusion follows from the principle of non-retroactivity of treaties, which entails that the substantive protections of the BIT apply to the state conduct that occurred after these protections became applicable to the eligible investment. (see fn.170: See Article 28 of the VCLT.)"

Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v Kingdom of Belgium (ICSID Case No. ARB/12/29) Award (30 April 2015)
"167. There is no doubt, and it is common ground, that as regards substantive obligations the general principle in international law, in the absence of provision to the contrary, is one of non-retroactivity.
168. The general principle (perhaps more accurately described as a presumption) of non-retroactivity of treaties is enshrined in Article 28 of the Vienna Convention:
"Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party." […]
189. […] Where there is no express provision, tribunals in investor-State arbitrations have sometimes applied a presumption of non-retroactivity (with or without reference to Article 28, Vienna Convention) to deny jurisdiction in cases where the dispute arose before the BIT came into force."

Adel A Hamadi Al Tamimi v Sultanate of Oman (ICSID Case No ARB/11/33) Award (27 October 2015)

"283. The US–Oman FTA came into force on 1 January 2009. There is no suggestion in the language of the Treaty that the investment protections of Chapter 10 were intended to apply with retrospective effect. (see fn.604: See Vienna Convention on the Law of Treaties, Art 28 (CLA-001) ("Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.")

Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v Republic of Costa Rica (ICSID Case No UNCT/13/2) Interim Award (Corrected) (30 May 2017)
"215. It is uncontroversial that Article 10.1.3 restates the general rule of customary international law reflected in Article 28 of the Vienna Convention on the Law of Treaties. The general principle of non-retroactivity is not controversial even if elements of interpretation of the rule give rise to debate."

EUROPEAN COURT OF HUMAN RIGHTS
G.S.B. v Switzerland, App No 28601/11 (ECHR, 22 December 2015)
"65. The Government added that in Article 28 of the Vienna Convention cited above, the statement of the principle that the provisions of a treaty did not bind a party in relation to any act or fact which had taken place or any situation which had ceased to exist before the date of the entry into force of the treaty with respect to that party, was accompanied by the phrase "unless a different intention appears from the treaty or is otherwise established" ... They therefore deduced that the parties to an international treaty were free to decide on the retroactive application of its provisions."

Janowiec and others v Russia, App Nos 55508/07 and 29520/09 (ECHR, 21 October 2013)
"128. The Court reiterates that the provisions of the Convention do not bind a Contracting 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 Convention with respect to that Party ("the critical date"). This is an established principle in the Court's case-law based on the general rule of international law embodied in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969 (see Varnava and Others, cited above, § 130; Šilih, cited above, § 140; and Blečić v. Croatia [GC], no. 59532/00, § 70, ECHR 2006III)."

Otašević v Serbia, App No 32198/07 (ECHR, 5 February 2013)
"22. Pursuant to the general rules of international law (notably, Article 28 of the Vienna Convention on the Law of Treaties), the Convention does not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before its entry into force with respect to that Party (see Blečić v. Croatia [GC], no. 59532/00, § 70, ECHR 2006III). In view of the fact that the alleged ill-treatment occurred in 2003, whereas the Convention entered into force in respect of Serbia on 3 March 2004, the Court lacks temporal jurisdiction to deal with this complaint. Accordingly, this complaint must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention. It is therefore not necessary to decide whether this complaint is also inadmissible on non-exhaustion grounds, as argued by the Government."

Mladenović v Serbia, App No 1099/08 (ECHR, 22 May 2012)
"38. Pursuant to the general rules of international law (notably, Article 28 of the Vienna Convention on the Law of Treaties), the Convention does not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before its

entry into force with respect to that Party (see Blečić v. Croatia [GC], no. 59532/00, § 70, ECHR 2006-III). However, it is clear from the Court's case-law concerning Article 2 that the procedural obligation to investigate has evolved into a separate and autonomous duty, capable of binding the State even when the death took place before ratification (see Šilih v. Slovenia [GC], no. 71463/01, § 159, 9 April 2009). Given the principle of legal certainty, the Court's temporal jurisdiction in this regard is nevertheless not open-ended (ibid, § 161). Where the death occurred before ratification, only procedural acts or omissions occurring after that date can fall within the Court's temporal jurisdiction (ibid, § 162). Furthermore, there must be a genuine connection between the death and the entry into force of the Convention in respect of that State for the procedural obligation to come into effect. In practice, this means that a significant proportion of the procedural steps required by this provision have been, or should have been, carried out after ratification. The Court has also held that circumstances may emerge which cast doubt on the effectiveness of the original investigation and an obligation may arise for further investigations to be pursued (see Hackett v. the United Kingdom (dec.), no. 34698/04, 10 May 2005)."

Przemyk v Poland, App No 22426/11 (ECHR, 17 September 2013)
"46. The Court reiterates that the provisions of the Convention do not bind a Contracting 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 Convention with respect to that Party. This is an established principle in the Court's case-law (see, among many other authorities, Blečić v. Croatia [GC], no. 59532/00, § 70, ECHR 2006III) based on the general rule of international law embodied in Article 28 of the Vienna Convention on the Law of Treaties."

Mučibabić v Serbia, App 34661/07 (ECHR, 12 July 2016)
"96. Pursuant to the general rules of international law (see Article 28 of the Vienna Convention on the Law of Treaties), the Convention does not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before its entry into force with respect to that Party ("the critical date" – see Blečić, cited above, § 70; Šilih, cited above, § 140; and Varnava and Others v. Turkey [GC], nos. 16064/90, 16065/90, 16066/90 and 16068-16073/90, § 130, ECHR2009). Since the fatal explosion at issue dates back to 1995, the Court would thus have lacked temporal jurisdiction to scrutinise the respondent State's responsibility, if any, with regard to its substantive obligation under Article 2, if the applicant had raised such an issue."

INTER-AMERICAN COURT OF HUMAN RIGHTS
Kichwa Indigenous People of Sarayaku v Ecuador (Merits and Reparations) Inter-American Court of Human Rights Series C No 172 (27 June 2012)
"128. The State argued that, when signing the oil exploration and exploitation contract with the CGC in 1996, it was under no obligation to initiate a prior consultation process, or to obtain the free, prior and informed consent of the Sarayaku People, since it had not yet ratified ILO Convention and because the Constitution at that time contained no provision in this regard. Thus, based on Article 28 of the Vienna Convention on the Law of Treaties, legally, this obligation was non-existent for Ecuador.[…]."

Rio Negro Massacres v Guatemala (Preliminary objection, merits, reparations and costs) Inter-American Court of Human Rights Series C No 253 (4 September 2012)
"36. In order to determine whether or not it has competence to hear a case or any aspect of it, in accordance with Article 62(1) of the American Convention, the Court must take into consideration the date on which the State accepted its jurisdiction, the terms of that acceptance,

and the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties. Even though the State is obliged to respect and to ensure the rights protected in the American Convention from the date on which it ratified the Convention, the Court's competence to declare a violation of its provisions is regulated by the said acceptance by the State."

Osorio Rivera and Family Members v Peru (Preliminary objection, merits, reparations and costs Inter-American Court of Human Rights Series C No 274 (26 November 2013)
"29. Article XIII of the Inter-American Convention on Forced Disappearance of Persons, in relation to Article 62 of the American Convention, establishes the power of the Court to examine matters related to compliance with the commitments made by the States parties to that instrument. On this basis, and on that of the principle of non-retroactivity, codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the Court is competent to examine the alleged failure to comply with this instrument, which establishes specific obligations in relation to the phenomenon of enforced disappearance as of the date on which the defendant State accepted the jurisdiction and of the entry into force of the said instrument for the State. (see fn.28: Article 28 of the Vienna Convention on the Law of Treaties establishes that "[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.)"

J v Peru (Preliminary objection, merits, reparations and costs) Inter-American Court of Human Rights, Series C No 275 (27 November 2013)
"19. The State deposited the document ratifying the Convention of Belém do Pará before the General Secretariat of the Organization of American States on June 4, 1996. Based on this, and on the principle of non-retroactivity codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the Court may examine acts or facts that occurred following the date of this ratification,13 and that have resulted in human rights violations of instantaneous execution and those also of continuing or permanent execution."

Arguelles y Otros v Argentina (Preliminary objection, merits, reparations and costs) Inter-American Court of Human Rights Series C No 288 (20 November 2014)
"22. In order to determine its temporal competence, in accordance with Article 62.1 of the American Convention, the Court must take into consideration the date of recognition of jurisdiction by the State, the terms in which it was given and the principle of non-retroactivity, provided for in article 28 of the Vienna Convention on the Law of Treaties of 1969."

COURT OF JUSTICE OF THE EUROPEAN UNION
Case C-613/12 (Gennaro Currà and Others v Bundesrepublik Deutschland, joined party: Repubblica italiana) Judgment, 12 July 2012
"3. According to Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969: 'Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

Article 29

Territorial scope of treaties

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

Άρθρο 29

Εδαφική εφαρμογή συνθηκών

Εκτός εάν διαφορετική πρόθεση προκύπτει από τη συνθήκη ή θεμελιώνεται άλλως, η συνθήκη δεσμεύει κάθε συμβαλλόμενο μέρος σε ολόκληρη την επικράτεια του.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

PERMANENT COURT OF ARBITRATION

Sanum Investments Limited v Lao People's Democratic Republic I, Case No 2013-13, Award on Jurisdiction, December 13, 2013

"220. It is undisputed by the Parties that Article 29 in its entirety has the force of binding customary international law. As this is not controversial the Tribunal does not consider that it needs to make lengthy developments to support this statement of law."

Article 30

Application of successive treaties relating to the same subject matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
(*a*) as between States Parties to both treaties the same rule applies as in paragraph 3;
(*b*) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

Άρθρο 30

Εφαρμογή διαδοχικών συνθηκών με το ίδιο αντικείμενο

1. Σύμφωνα με το Άρθρο 103 του Χάρτη των Ηνωμένων Εθνών, τα δικαιώματα και οι υποχρεώσεις των Κρατών που είναι συμβαλλόμενα μέρη σε διαδοχικές συνθήκες με ίδιο αντικείμενο, καθορίζονται σύμφωνα με τις κάτωθι παραγράφους.
2. Όταν η συνθήκη ορίζει ότι υπόκειται στις διατάξεις, ή ότι δε θα πρέπει να θεωρείται ασύμβατη προς τις διατάξεις, προγενέστερης ή μεταγενέστερης συνθήκης, κατισχύουν οι διατάξεις της προγενέστερης ή μεταγενέστερης συνθήκης αυτής.
3. Όταν όλα τα συμβαλλόμενα μέρη στην προγενέστερη συνθήκη τυγχάνουν επίσης συμβαλλόμενα μέρη στην μεταγενέστερη συνθήκη, αλλά η προγενέστερη συνθήκη δεν έχει τερματιστεί ή ανασταλεί η λειτουργία της σύμφωνα με το άρθρο 59, η προγενέστερη συνθήκη εφαρμόζεται στο βαθμό που οι διατάξεις της είναι συμβατές με τις διατάξεις της μεταγενέστερης συνθήκης.
4. Όταν τα συμβαλλόμενα μέρη στη μεταγενέστερη συνθήκη δεν περιλαμβάνουν όλα τα συμβαλλόμενα μέρη της προγενέστερης συνθήκης:
(α) Μεταξύ των Κρατών μερών και στις δύο συνθήκες εφαρμόζεται ο κανόνας της παραγράφου 3·
(β) Μεταξύ Κράτους συμβαλλομένου και στις δύο συνθήκες και άλλου Κράτους συμβαλλομένου μόνο σε μία εξ' αυτών, η συνθήκη στην οποία είναι και τα δύο Κράτη συμβαλλόμενα διέπει τα αμοιβαία δικαιώματα και τις υποχρεώσεις τους.
5. Η παράγραφος 4 εφαρμόζεται με την επιφύλαξη του άρθρου 41, ή οποιουδήποτε ζητήματος που αφορά τον τερματισμό ή την αναστολή ισχύος της συνθήκης κατά το άρθρο 60 ή οποιοδήποτε ζητήματος ευθύνης που ενδεχομένως προκύψει για ένα Κράτος από τη σύναψη ή την εφαρμογή μιας συνθήκης, οι διατάξεις της οποίας τυγχάνουν ασυμβίβαστες προς τις υποχρεώσεις του απέναντι σε άλλο Κράτος δυνάμει άλλης συνθήκης.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

PERMANENT COURT OF ARBITRATION

European American Investment Bank AG (Austria) v Slovak Republic, Case No 2010-17, Award on Jurisdiction, October 22, 2012

"239. According to Article 30(3) of the VCLT, when all the States Parties to an anterior treaty are also States Parties to a posterior treaty, and the earlier treaty is not terminated or suspended by operation of Article 59 of the VCLT, the "earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty." Article 30(4) of the VCLT adds that, "[w]hen 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.

240. Unlike Article 59 of the VCLT, Article 30(3) of the VCLT requires no proof of the States Parties' intention to terminate a particular provision and does not relate to the incompatibility of the treaties as a whole, but rather to the incompatibility of specific provisions. […]

279. In sum, the Tribunal considers that, if the BIT and the ECT were considered as having the same subject matter, the application of Article 30(3) of the VCLT would not result in the inapplicability of Article 8 of the BIT, on the grounds of incompatibility with either Article 292 ECT (now Article 344 TFEU) or Article 12 ECT (now Article 18 TFEU).

280. As a general conclusion, the Tribunal reiterates that, in its view, the BIT and the ECT do not have the same subject matter, and as such coexist and are complementary in the international sphere, where they should be interpreted in harmony with one another. In addition, the Tribunal has come to the conclusion that, if the BIT and the ECT were considered to have the same subject matter, the BIT would not be terminated under Article 59 of the VCLT, for lack of a common intention to terminate and for lack of incompatibility; neither, in such hypothesis, would the application of Article 30(3) of the VCLT compel the inapplicability of Article 8 of the BIT, as the Tribunal could trace no EU rule which would be violated by such application."

South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) Case No 2013-19, Award on Jurisdiction and Admissibility, October 29, 2015

"237. These provisions mirror the general rules of international law concerning the interaction of different bodies of law, which provide that the intent of the parties to a convention will control its relationship with other instruments. This can be seen, in the case of conflicts between treaties, in Article 30 of the Vienna Convention on the Law of Treaties. Articles 30(2) and 30(3) of the Vienna Convention provide that, as between treaties, the later treaty will prevail to the extent of any incompatibility, unless either treaty specifies that it is subject to the other, in which case the intent of the parties will prevail.

238. […] (d) Where independent rights and obligations have arisen prior to the entry into force of the Convention and are incompatible with its provisions, the principles set out in Article 30(3) of the Vienna Convention and Article 293 of the Convention provide that the Convention will prevail over the earlier, incompatible rights or obligations."

WNC Factoring Ltd. v Czech Republic, Case No 2014-34, Award, February 22, 2017

"296. Notwithstanding this, the Tribunal takes the first limb of the Respondent's argument to be directed towards the 'sameness' criterion in Articles 59(1) and 30(1) of the VCLT (i.e., that the treaties share the same subject matter), whilst the second limb is directed towards the criterion of incompatibility between the treaties in Articles 59(1)(b) and 30(3). Viewed in this way, any "confusion or conflation between sameness and incompatibility" can be overcome and the Tribunal can proceed to determine the objection. […]

308. It follows that the Respondent has not established that EU law relates to the same subject matter of BIT under Articles 59(1) or 30 of the VCLT. […]

309. […] The second limb of the Respondent's EU law objection, under Articles 59(l)(b) and 30(3) of the VCLT, likewise fails. It is argued that there is an incompatibility between EV law and the BIT. But the BIT does not discriminate on the grounds of nationality against EU investors from third states. The fact that the BIT affords certain rights not available to other EU investors does not make the BIT discriminatory; there is nothing in the BIT that prevents investors of other states claiming equal rights under the BIT. It also does not bar investors of non-party states from accessing commensurate protections under EU law. […]
310. For these reasons, the Tribunal rejects the Respondent's argument about the effect of EV law on jurisdiction under the BIT […].”

Jürgen Wirtgen and others v Czech Republic, Case No 2014-03, Final Award October 11, 2017
“259. The third objection advanced by the Commission concerns the conflict rules in Article 30(3) of the VCLT. Here the Commission argues that specific provisions of the Treaty, including Article 10 (from which the Tribunal derives its jurisdiction) cannot be applied as they are incompatible with EU law, with the result that the Tribunal lacks jurisdiction to hear the present case. Once again, the Tribunal disagrees. Article 30 of the VCLT reads in relevant part as follows:
“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.
[...]
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty”.
260. Article 30(3) is thus concerned with the priority between particular provisions of an earlier and a later treaty, as opposed to Article 59 which deals with the termination of an entire treaty. While Article 30(3) may thus be triggered “by the slightest incompatibility”, Article 59 requires that the earlier treaty be “so far incompatible” with the later treaty that both treaties cannot be applied at the same time.
261. As mentioned above, Article 10 of the Treaty is compatible with EU law, which is limited to inter-State disputes concerning the interpretation and application of EU law, and does not extend to investor-State arbitration as contemplated in Article 10 of the BIT. There is thus no question of incompatibility which would call for the application of Article 30(3) of the VCLT.
[…]
265. Finally, the Commission points out that after the entry into force of the Lisbon Treaty, the EU has exclusive competence for concluding international agreements on investment protection. As a result, pursuant to Article 59 or Article 30(3) of the VCLT, the relevant provisions of the Treaty on which the present case is founded, are inapplicable and the Tribunal lacks jurisdiction. The Tribunal has difficulty accepting this proposition. For Articles 59 or 30(3) of the VCLT to apply, the Commission would have to establish that the EU’s new competence over “foreign direct investment” after the Lisbon Treaty covers the same subject matter as the Treaty. The Commission has not done so. In any event, as noted, one of the reasons for rejection of the Commission’s intra-EU jurisdictional objections is that EU law contains no equivalent of the arbitration clause in the Treaty. The Lisbon Treaty has not changed this situation. Accordingly, for the same reasons as those mentioned above [§§252 et. seq.], the Commission’s argument must be rejected.”

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Electrabel S.A. v Republic of Hungary (ICSID Case No ARB/07/19) Decision on Jurisdiction, Applicable Law and Liability (30 November 2012)

"4.181. According to the Advocate General (as also adopted by the ECJ), Article 307 EC is only the expression in the EC Treaties of the general international rule contained in Article 30(4)(b) of the Vienna Convention to the effect that if there are two successive treaties not having the same parties, the applicable treaty is the one (whether the first or the second one) to which both States are parties.
4.182. However, the Tribunal notes that the ECJ has interpreted Article 307 EC not only positively for what it does say, but also, 'negatively', for what it does not say. If two States are both parties to a pre-accession treaty and the EC Treaties, in case of incompatibility between the two legal orders, it is the later treaty which applies, in conformity with Article 30(3) of the Vienna Convention, 36 to which Article 30(4)(b) of the Vienna Convention refers.
[…]
4.190. Article 30 of the Vienna Convention: The Tribunal can deal summarily with Article 30 of the Vienna Convention, because it has the same consequences as the 'negative' interpretation of Article 307 EC decided by the ECJ and Advocate General in Commission v Slovakia (where, as described above, Article 307 was treated as the expression under EU law of Article 30(4)(b) of the Vienna Convention). Accordingly, even in situations where Article 307 EC would not have applied, the same result would have followed under Article 30, on the hypothesis that the two treaties related to the same subject-matter.
4.191. In summary, from whatever perspective the relationship between the ECT and EU law is examined, the Tribunal concludes that EU law would prevail over the ECT in case of any material inconsistency. That conclusion depends, however, upon the existence of a material inconsistency; and the Tribunal has concluded that none exists for the purpose of deciding the Parties' dispute in this arbitration."

Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v Italian Republic (ICSID Case No ARB/14/3) Award (27 December 2016)
"293. The majority of these cases were brought under BITs signed before the respondent State became part of the European Union. The main objection, raised in each case either by the Respondent, or by the EC as intervenor, was that entry into the EU had terminated or partially superseded the relevant BIT. Crucial to determining these objections, whether made under Article 59 or 30 of the VCLT, was the compatibility of the ECT with European Law. As set out in greater detail below, the tribunals in question have consistently rejected these objections."

Marfin Investment Group Holdings S.A. and others v Republic of Cyprus (ICSID Case No ARB/13/27) Award (26 July 2018)
"584. The Tribunal finds that neither Article 59, nor Article 30 of the VCLT applies in this case.
585. The Tribunal notes that both Article 59 and Article 30 of the VCLT apply only when the two successive treaties (in this case, the BIT and the EU treaties) relate to the "same subject-matter". […]
587. The Tribunal, similarly to the EURAM v. Slovakia tribunal,441 considers that a good faith interpretation of Articles 59 and 30 of the VCLT, in accordance with the ordinary meaning of the terms employed, seen in their context and in light of the object and purpose of the VCLT, does not support the conclusion that two successive treaties deal with the same subject-matter if they may apply simultaneously to the same set of facts. Two different treaties (for instance, a treaty on trade and a treaty on labor rights) may apply simultaneously to the same set of facts, without them having the same subject matter. Further, if two treaties have the same goal (for instance, reducing atmospheric pollution) but approach the achievement of that goal from two different perspectives (for instance, by banning the use of certain types of fuels and by

regulating the use of fertilizers), the treaties do not have the same subject-matter. The Tribunal also considers that Respondent conflates the question of whether treaties have the same subject-matter with the question of whether treaties are compatible with each other. For purposes of an analysis under Articles 59 and 30 of the VCLT, these are distinct inquiries and the question of compatibility only arises if and when it has been determined that the treaties have the same subject-matter. This Tribunal agrees with the EURAM v. Slovakia tribunal that the subject-matter of a treaty refers to the issues with which its constituent provisions deal, its topic or substance.
591. Consequently, the Tribunal finds that, since the Treaty and the EU treaties do not have the same subject-matter, neither Article 59, nor Article 30 of the VCLT apply to this case. Respondent's arguments pertaining to the alleged intent of Cyprus and Greece to terminate the BIT, or to the purported incompatibility between the Treaty and its various provisions and EU law, do nut thus require further examination by the Tribunal.
595.Respondent refers to the Eureko v. Slovakia award as support for its contention that, following the entry into force of the EU treaties and, now, the issuance of the Achmea judgment, the arbitration clause in the Treaty must be deemed to have been displaced by EU law pursuant to Article 30(3) of the VCLT. The Tribunal cannot endorse this conclusion. As mentioned above, Article 30 of the VCLT does not apply in the present case, since the Treaty and the EU treaties do not have the same subject-matter. Further, the section of the Eureko v. Slovakia award cited by Respondent contains an observation made by that tribunal obiter. In other words, it does not form part of the Tribunal's reasoning and, in any event, that reasoning is not binding upon the Tribunal."

Vattenfall AB and others v Federal Republic of Germany (ICSID Case No ARB/12/12) Decision on the Achmea Issue (31 August 2018)
"215. The Parties and the EC have raised a number of potential mechanisms by which they submit that the Tribunal should resolve any alleged conflict between the EU Treaties and the ECT. These are (i) the lex posterior rule in Article 30 VCLT;
[…]
217. There are several difficulties with applying the rule of lex posterior to the present case. One is that the Tribunal agrees with Claimants that the general rule of lex posterior contained in Article 30 VCLT is a subsidiary one. Where a treaty includes specific provisions dealing with its relationship to other treaties, such as appear in Article 16 ECT, the *lex specialis* will prevail.
218. In addition, it is by no means clear that the EU Treaties are the "later treaty" under Article 30 VCLT. The current Articles 267 and 344 TFEU have existed in substantively similar form since a time prior to the conclusion of the ECT, and have only been renumbered in the successive versions of the EU Treaties."

EUROPEAN COURT OF HUMAN RIGHTS
Nada v Switzerland, App No 10593/08 (ECHR, 12 September 2012)
"45. However, it observed that Article 190 of the Constitution contained no rules on how to settle possible conflicts between different norms of international law which were legally binding on Switzerland, and that in the present case there was such a conflict between the Security Council's decisions on the one hand and the guarantees of the European Convention on Human Rights and the International Covenant on Civil and Political Rights on the other. It took the view that unless the conflict could be resolved by the rules on the interpretation of treaties, it would be necessary, in order to settle the issue, to look to the hierarchy of international legal norms, according to which obligations under the United Nations Charter prevailed over obligations under any other international agreement (Article 103 of the Charter,

taken together with Article 30 of the Vienna Convention on the Law of Treaties; see paragraphs 69 and 80 below)."

G.S.B. v Switzerland, App No 28601/11 (ECHR, 22 December 2015)
"23. Secondly, with reference to the pilot case A-4013/2010 of 15 July 2010 (see paragraph 18 above), the Federal Administrative Court set out the following reasoning:
[…]4.1.2 With particular regard to the relationship between the different conventions (Convention 10, CDI-US 96 [in particular Article 26 thereof], the ECHR [in particular Article 8 thereof] and UN Covenant II [in particular Article 17 thereof]), the court pointed out that that relationship was established pursuant solely to the rules set out in Article 30 of the Vienna Convention on the Law of Treaties of 23 May 1969 (VCLT) and that there was no substantive hierarchy in international law (apart from the pre- eminence of jus cogens)."

Al-Dulimi and Montana Management Inc. v Switzerland, App No 5809/08 (ECHR, 21 June 2016)
"29. In three almost identical judgments, the Federal Court dismissed the appeals, confining itself to verifying that the applicants' names actually appeared on the lists drawn up by the Sanctions Committee and that the assets concerned belonged to them. The relevant parts of those judgments read as follows (unless otherwise stated, this is the text of the judgment concerning the first applicant):
[…]7.2 Article 190 of the Constitution does not, however, provide for any rule of conflict between the various norms of international law that are equally binding on Switzerland. However, under Article 103 of the Charter, in the event of a conflict between the obligations of the members of the United Nations under the Charter and their obligations under any other international agreement, their Charter obligations prevail. This primacy is also enshrined in Article 30 § 1 of the Vienna Convention on the Law of Treaties of 23 May 1969 ('VCLT'; RS 0.111; entered into force in respect of Switzerland on 6 June 1990).
Moreover, neither the European Convention on Human Rights nor the International Covenant on Civil and Political Rights contains clauses which would, in themselves or by virtue of another treaty, prevail over the conflict clause that is enshrined in both Article 103 of the Charter and Article 30 § 1 VCLT."

SECTION 3
INTERPRETATION OF TREATIES

ΤΜΗΜΑ 3
ΕΡΜΗΝΕΙΑ ΤΩΝ ΣΥΝΘΗΚΩΝ

Article 31
General Rule Of Interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Άρθρο 31
Γενικός κανόνας ερμηνείας

1. Η συνθήκη ερμηνεύεται με καλή πίστη, σύμφωνα με το σύνηθες νόημα που δίνεται στους όρους της συνθήκης, μέσα στο γενικό τους πλαίσιο και υπό το φως του αντικειμένου και του σκοπού της.
2. Το γενικό πλαίσιο των όρων της συνθήκης, για τους σκοπούς ερμηνείας μιας συνθήκης, εκτός του κειμένου, συμπεριλαμβανομένου του προοιμίου και των παραρτημάτων της, περιλαμβάνει:
(α) Κάθε συμφωνία μεταξύ όλων των συμβαλλομένων μερών σχετική προς την συνθήκη επ' ευκαιρία σύναψης της συνθήκης·
(β) Κάθε έγγραφο, το οποίο συντάχθηκε από ένα ή περισσότερα συμβαλλόμενα μέρη επ' ευκαιρία της σύναψης της συνθήκης, το οποίο έγινε αποδεκτό από τα άλλα μέρη ως έγγραφο σχετιζόμενο με την συνθήκη.
3. Μαζί με το γενικό πλαίσιο θα λαμβάνονται υπόψη:
(α) Κάθε μεταγενέστερη συμφωνία μεταξύ των συμβαλλομένων μερών, η οποία αφορά την ερμηνεία της συνθήκης ή την εφαρμογή των διατάξεών της·
(β) Κάθε μεταγενέστερη πρακτική των συμβαλλομένων μερών κατά την εφαρμογή της συνθήκης, με την οποία θεμελιώνεται η συμφωνία αυτών ως προς την ερμηνεία της·
(γ) Τυχόν σχετικοί κανόνες διεθνούς δικαίου που εφαρμόζονται στις μεταξύ των συμβαλλομένων μερών σχέσεις.
4. Ειδικό νόημα αποδίδεται σε έναν όρο εάν θεμελιώνεται ότι αυτή ήταν η πρόθεση των συμβαλλομένων μερών.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3
"63. In interpreting the MOU, the Court will apply the rules on interpretation to be found in Articles 31 and 32 of the Vienna Convention, which it has consistently considered to be reflective of customary international law. […]
70. The Court now turns to the text of the MOU set out above which it will consider as a whole. The title of the MOU is "to grant to each other no objection in respect of submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf". As the Court has previously had occasion to note, a treaty's purpose may be indicated by its title. […]
89. Pursuant to Article 31, paragraph 3 (c) of the Vienna Convention, "Any relevant rules of international law applicable in the relations between the parties" should be taken into account, together with the context. In this case, both Somalia and Kenya are parties to UNCLOS, which is expressly mentioned in the MOU. UNCLOS therefore contains such relevant rules. Moreover, given that the sixth paragraph of the MOU concerns the delimitation of the continental shelf, Article 83 of UNCLOS, entitled "Delimitation of the continental shelf between States with opposite or adjacent coasts", is particularly relevant. […]
91. In line with Article 31, paragraph 3 (c), of the Vienna Convention, and particularly given the similarity in wording between the sixth paragraph of the MOU and Article 83, paragraph 1, of UNCLOS, the Court considers that it is reasonable to read the former in light of the latter."

Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia) (Preliminary Objections) [2016] ICJ Rep 100
"33. That question has to be answered by the application to the relevant provisions of the Pact of Bogotá of the rules on treaty interpretation enshrined in Articles 31 to 33 of the Vienna Convention. Although that Convention is not in force between the Parties and is not, in any event, applicable to treaties concluded before it entered into force, such as the Pact of Bogotá, it is well established that Articles 31 to 33 of the Convention reflect rules of customary international law. […]
35. An *a contrario* reading of a treaty provision — by which the fact that the provision expressly provides for one category of situations is said to justify the inference that other comparable categories are excluded — has been employed by both the present Court and the Permanent Court of International Justice. Such an interpretation is only warranted, however, when it is appropriate in light of the text of all the provisions concerned, their context and the object and purpose of the treaty. Moreover, even where an *a contrario* interpretation is justified, it is important to determine precisely what inference its application requires in any given case."

Whaling In The Antarctic (Australia v Japan: New Zealand intervening) (Merits) [2014] ICJ Rep 226
"46. Article VI of the Convention states that "the Commission may from time to time make recommendations to any or all Contracting Governments on any matters which relate to whales or whaling and to the objectives and purposes of this Convention. These recommendations, which take the form of resolutions, are not binding. However, when they are adopted by consensus or by a unanimous vote, they may be relevant for the interpretation of the Convention or its Schedule. […]
83. Article VIII expressly contemplates the use of lethal methods, and the Court is of the view that Australia and New Zealand overstate the legal significance of the recommendatory

resolutions and Guidelines on which they rely. First, many IWC resolutions were adopted without the support of all States parties to the Convention and, in particular, without the concurrence of Japan. Thus, such instruments cannot be regarded as subsequent agreement to an interpretation of Article VIII, nor as subsequent practice establishing an agreement of the parties regarding the interpretation of the treaty within the meaning of subparagraphs (a) and (b), respectively, of paragraph (3) of Article 31 of the Vienna Convention on the Law of Treaties."

Request for Interpretation of the Judgment in the Case Concerning the Temple of Preah Vihear (Cambodia v Thailand) (Cambodia v Thailand) Judgment [2013] ICJ Rep 281
"75. A judgment of the Court cannot be equated to a treaty, an instrument which derives its binding force and content from the consent of the contracting States and the interpretation of which may be affected by the subsequent conduct of those States, as provided by the principle stated in Article 31, paragraph 3 (b), of the 1969 Vienna Convention on the Law of Treaties. A judgment of the Court derives its binding force from the Statute of the Court and the interpretation of a judgment is a matter of ascertaining what the Court decided, not what the parties subsequently believed it had decided. The meaning and scope of a judgment of the Court cannot, therefore, be affected by conduct of the parties occurring after that judgment has been given."

PERMANENT COURT OF ARBITRATION
Railway Land Arbitration (Malaysia v Singapore) Case No 2012-01, Award, October 30, 2014
"167. It is important to recognize that this part of the debate is about drawing inferences from the conduct of the Parties as to the interpretation of an earlier treaty. Thus Article 31 of the Vienna Convention states that there shall be "taken into account" when interpreting a treaty "any subsequent agreement between the parties" regarding its interpretation. The agreement referred to is consensus, not a formal agreement that itself has the status of a treaty. Such an agreement would plainly be conclusive."

Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India (Bangladesh v India) Case No 2010-16, Award, July 7, 2014
"165. The Tribunal is not convinced that the clear determination of the Bagge Award was undone by the exchange of correspondence between officials of the two governments in 1951. As noted by Bangladesh, the Indian letter was unsigned. While recognizing that a subsequent agreement in the sense of article 31(3)(a) of the Vienna Convention on the Law of Treaties need not itself possess all the formalities of a treaty (see International Law Commission, Report on the Sixty Fifth Session, UN Doc. A/68/10 at p. 32 (2013)), the Tribunal does not consider the exchange of letters to be sufficiently authoritative to constitute such a subsequent agreement between the Parties. Above all, it is difficult for the present Tribunal to accept that such a low-level and brief exchange of correspondence between civil servants, purporting to reverse an important general determination of the formal Indo-Pakistani Boundary Disputes Tribunal established by a solemn agreement at the Inter-Dominion Conference at New Delhi on 14 December 1948, represents an authentic agreement of the Parties."

South American Silver Limited (Bermuda) v The Plurinational State of Bolivia, Case No 2013-15, Award, August 30, 2018
"216. Based on the above, the Tribunal finds that the principle of systemic interpretation is part of the rules of interpretation of international treaties foreseen in Article 31 of the Vienna Convention. However, this principle must be applied in harmony with the rest of the provisions of the same article and cautiously, in order to prevent the tribunal from exceeding its

jurisdiction and applying rules to the dispute which the Parties have not agreed to."

Hulley Enterprises Limited (Cyprus) v The Russian Federation, Case No 2005-03/AA226 Final Award, July 18, 2014
"1415. In any event, the Tribunal, having found that the interpretation of Article 21 of the ECT according to the general rule of interpretation under Article 31 of the VCLT results in a meaning that is neither ambiguous nor obscure and does not lead to a result which is manifestly absurd or unreasonable, does not need to call in aid any other rule of interpretation. Finally, the Tribunal does not find much helpful guidance in the *travaux préparatoires* of the ECT. Respondent claims that the replacement of "Taxation Measures" with "taxes" in a draft of Article 21(5) of the ECT circulated in June 1993 could not have been incidental. However, if this replacement had been motivated by the intention of the negotiators to limit the scope of the claw-back provision in Article 21(5) of the ECT compared to the scope of the carve-out in Article 21(1) of ECT, the Tribunal would expect such a motivation to have found some additional expression in the record."

Yukos Universal Limited (Isle of Man) v The Russian Federation, Case No 2005-04/AA227 Final Award, July 18, 2014
"1415. In any event, the Tribunal, having found that the interpretation of Article 21 of the ECT according to the general rule of interpretation under Article 31 of the VCLT results in a meaning that is neither ambiguous nor obscure and does not lead to a result which is manifestly absurd or unreasonable, does not need to call in aid any other rule of interpretation. Finally, the Tribunal does not find much helpful guidance in the *travaux préparatoires* of the ECT. Respondent claims that the replacement of "Taxation Measures" with "taxes" in a draft of Article 21(5) of the ECT circulated in June 1993 could not have been incidental. However, if this replacement had been motivated by the intention of the negotiators to limit the scope of the claw-back provision in Article 21(5) of the ECT compared to the scope of the carve-out in Article 21(1) of ECT, the Tribunal would expect such a motivation to have found some additional expression in the record."

Veteran Petroleum Limited v The Russian Federation, Case No 2005-05/AA228, Final Award, July 18, 2014
"1415. In any event, the Tribunal, having found that the interpretation of Article 21 of the ECT according to the general rule of interpretation under Article 31 of the VCLT results in a meaning that is neither ambiguous nor obscure and does not lead to a result which is manifestly absurd or unreasonable, does not need to call in aid any other rule of interpretation. Finally, the Tribunal does not find much helpful guidance in the *travaux préparatoires* of the ECT. Respondent claims that the replacement of "Taxation Measures" with "taxes" in a draft of Article 21(5) of the ECT circulated in June 1993 could not have been incidental. However, if this replacement had been motivated by the intention of the negotiators to limit the scope of the claw-back provision in Article 21(5) of the ECT compared to the scope of the carve-out in Article 21(1) of ECT, the Tribunal would expect such a motivation to have found some additional expression in the record."

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Mera Investment Fund Limited v Republic of Serbia (ICSID Case No ARB/17/2) Decision on Jurisdiction (30 November 2018)
"121. According to the Vienna Convention "[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 light of its object and purpose." Due consideration of the preamble to the BIT is relevant to determine the BIT's object and purpose and the scope of the protected investment.
122. In the present case, the preamble of the BIT states inter alia that the contracting parties entered into the BIT with the desire "to create favourable conditions for greater economic cooperation between the Contracting Parties" and "to create and maintain favourable conditions for reciprocal investments". The Arbitral Tribunal considers this language to support a reading of the BIT, which is a treaty concerning "the Reciprocal Promotion and Protection of Investments", to provide broad investment protection."

Mobil Investments Canada Inc. v Canada (ICSID Case No ARB/15/6) Decision on Jurisdiction and Admissibility (13 July 2018)
"158. In addition, such an approach has clearly been rejected by all three NAFTA Parties in their practice subsequent to the adoption of NAFTA. In accordance with the principle enshrined in Article 31(3)(b) of the Vienna Convention on the Law of Treaties, 1969, the subsequent practice of the parties to a treaty, if it establishes the agreement of the parties regarding the interpretation of the treaty, is entitled to be accorded considerable weight. […]
160. In the present case, there is no pertinent decision of the Free Trade Commission. The Tribunal is not, however, wholly persuaded by Mobil's argument. The Tribunal accepts that there is a difference between the importance of a Free Trade Commission decision on interpretation and the importance of other forms of subsequent practice. The former is binding upon the Tribunal by virtue of NAFTA Article 1131, whereas Article 31(3)(b) of the Vienna Convention directs only that the latter kind of practice should be "taken into account" in relation to interpretation. Moreover, the Tribunal accepts that the fact that the three States have not elected to move to a decision of the Free Trade Commission is significant. Nevertheless, it considers that there might be many reasons for the absence of a Free Trade Commission decision and it does not believe that the subsequent practice of the three NAFTA Parties can be disregarded merely because it takes forms different from a Commission decision."

Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/21) Award (13 November 2017)
"302. First, it is not permissible, consistently with Article 31 of the VCLT, to dismiss the relevance of the express terms of a treaty on the basis of a supposition that the drafters did not have a particular situation in mind when the ordinary meaning of those terms is clearly capable of extending to that situation. Articles 25 and 72 of the ICSID Convention cannot be emptied of content in relation to investment treaty arbitration, which depends upon the existence of an arbitration agreement between the parties to the dispute no less than any other form of international arbitration."
UP (formerly Le Chèque Déjeuner) and C.D Holding Internationale v Hungary (ICSID Case No ARB/13/35) Award (9 October 2018)
"236. […] Although Art. 31 of the VCLT is silent as to the competent body or decision-maker to interpret treaties, the parties to a treaty designate such a body. Article 267 of the TFEU provides the CJEU with jurisdiction over the interpretation of the TFEU, and these interpretative decisions are binding upon the Member States."

WORLD TRADE ORGANIZATION
Argentina—Measures Relating To Trade In Goods And Services—Report of the Panel (30 September 2015) WT/DS453/R
"7204. From the parties arguments, we note that, certainly, the expression treatment no less favourable in Article II:1 of the GATS is also to be found in Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994, as well as in Article XVII of the GATS. We consider that

these provisions may constitute a relevant context when interpreting the expression treatment no less favourable under Article II:1 of the GATS. Nevertheless, before turning to the context, we recall that Article 31.1 of the 1969 Vienna Convention on the Law of Treaties states that the starting point for an interpretative exercise is the ordinary meaning to be given to the terms of the treaty. Article 31.1 of the Vienna Convention adds that the basis of interpretation shall be not only the ordinary meaning of the terms but also their context and in the light of the object and purpose. We shall thus start with the ordinary meaning of the terms composing the expression treatment no less favourable. We turn to the dictionary of the Spanish Royal Academy for the definition of the ordinary meaning of the Spanish terms trato (treatment), menos (less), and favorable (favourable). [……..] From the ordinary meaning of the terms, it can be seen that the expression treatment no less favourable refers to the action of not granting a benefit to some in smaller measure than to others. Let us nevertheless place this ordinary meaning within its context and in the light of the object and purpose of the treaty in which the expression is to be found, as provided by Article 31.1 of the Vienna Convention. […]
7207. We agree with the parties on the need to look at the context of the expression treatment no less favourable when interpreting it in accordance with Article 31.1 of the Vienna Convention, and we shall now do this. First, we shall address the immediate context of the expression, shaped by the actual terms of Article II, before examining its broader context, comprising other provisions of the GATS, as well as other covered agreements."

United States—Measures Affecting The Production And Sale Of Clove Cigarettes—Report of the Appellate Body (4 April 2012) WT/DS406/AB/R
"267. We note that the text of Article 31(3)(a) of the Vienna Convention does not establish a requirement as to the form which a subsequent agreement between the parties should take. We consider, therefore, that the term agreement in Article 31(3)(a) of the Vienna Convention refers, fundamentally, to substance rather than to form. Thus, in our view, paragraph 5.2 of the Doha Ministerial Decision can be characterized as a subsequent agreement within the meaning of Article 31(3)(a) of the Vienna Convention provided that it clearly expresses a common understanding, and an acceptance of that understanding among Members […]."

EUROPEAN COURT OF HUMAN RIGHTS
Cyprus v Turkey, App No 25781/94 (ECHR, 12 May 2014)
"23. The Court reiterates that the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969 (the "Vienna Convention"). […..] On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties."

Hassan v United Kingdom, App No 29750/09 (ECHR, 16 September 2014)
"102. Turning to the criterion contained in Article 31 § 3(c) of the Vienna Convention, the Court has made it clear on many occasions that the Convention must be interpreted in harmony with other rules of international law of which it forms part. This applies no less to international humanitarian law. […..] The Court must endeavour to interpret and apply the Convention in a manner which is consistent with the framework under international law delineated by the International Court of Justice."

INTER-AMERICAN COURT OF HUMAN RIGHTS

Kichwa Indigenous People of Sarayaku v Ecuador (Merits and Reparations) Inter-American Court of Human Rights Series C No 172 (27 June 2012)
"161. On other occasions, this Court has indicated that human rights treaties are living instruments, the interpretation of which must evolve over time and reflect current living conditions. This evolutionary interpretation is consistent with the general rules of interpretation established in Article 29 of the American Convention, as well as in the Vienna Convention on the Law of Treaties. Thus, the Court has stated that, when interpreting a treaty, it is necessary to take into account not only the agreements and instruments formally related to it (Article 31(2) of the Vienna Convention), but also the system of which it forms part (Article 31(3) of this instrument). This Court has also considered that it could "address the interpretation of a treaty provided it is directly related to the protection of human rights in a Member State of the inter-American system," even if that instrument does not belong to the same regional system of protection."

Case Of Gonzales Lluy et al v Ecuador (Preliminary objections, merits, reparations and costs) Inter-American Court of Human Rights Series C No 298 (1 September 2015)
"21. […] The Inter-American Court has reflected this in its case law; thus, in addition to the evolutive method, it has used other interpretation criteria, such as literal interpretation, systematic interpretation, and teleological interpretation. In this regard, the Court has understood that literal interpretation is the interpretation made in good faith in accordance with the ordinary meaning to be given to the terms used. The Court has used this type of interpretation when considering the literal meaning of some expressions and terms of the Convention and other treaties. Meanwhile, based on a systematic interpretation, the Court has maintained that the norms must be interpreted as part of a whole, the meaning and scope of which should be established in function of the legal system to which it belongs. In the context of this type of interpretation, the Court has analyzed the *travaux préparatoires* of the American Declaration and of the American Convention, as well as of some instruments of the universal system of human rights and other regional systems of protection such as the European and the African systems. The Court has also used the teleological or purposive interpretation. In this regard, the Court has analyzed the purpose of the norms involved in the interpretation, considering that the object and purpose of the treaty and the purposes of the inter-American human rights system are pertinent. Lastly, evolutive interpretation means that: Human rights treaties are living instruments whose interpretation must consider the changes over time and present day conditions. […] That evolutive interpretation is consistent with the general rules of treaty interpretation established in Article 29 of the American Convention, and in the 1969 Vienna Convention on the Law of Treaties. By making an evolutive interpretation, the Court has given special relevance to comparative law, and for these reasons has used domestic law or the case law of domestic courts when examining specific disputes in contentious cases."

AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS
The Matter of Ingabire Victoire Umuhoza v Republic Of Rwanda, App No 003/2014 (7 September 2018)
"66. The Court recalls that it has already given the interpretation that direct or close members of the family who suffered physically or psychologically from the situation of the victim also fall within the definition of victim and may also claim reparation of the moral prejudice caused by the said suffering."

COURT OF JUSTICE OF THE EUROPEAN UNION
Case C-15/17 (Bosphorus Queen Shipping Ltd Corp. v Rajavartiolaitos), Judgment (Third Chamber) 11 July 2018

"67. In order to interpret the provisions of the Montego Bay Convention it is necessary to refer to the rules of customary international law reflected by Article 31 of the Vienna Convention, which are binding on the EU institutions and are part of the EU legal order and from which it is clear that a treaty must 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."

Case C464/13 and C465/13 (Europäische Schule München v Silvana Oberto and Barbara O'Leary) Judgment (Fourth Chamber) 11 March 2015

"34. Therefore, although the Convention defining the Statute of the European Schools constitutes, as far as the European Union is concerned, an act of one of the institutions of the European Union, within the meaning of point (b) of the first paragraph of Article 267 TFEU, it is also governed by international law and, more specifically, as regards its interpretation, by the international law of treaties.

35. The international law of treaties was consolidated, essentially, in the Vienna Convention. Under Article 1 of that convention, the latter applies to treaties between States. However, under Article 3(b) of that convention, the fact that it does not apply to international agreements concluded between States and other subjects of international law is not to affect the application to such agreements of any of the rules set forth in the Vienna Convention to which they would be subject under international law independently of that convention. […]

65. The case-law of the Complaints Board of the European Schools has subsequently developed on the basis of Article 80 of the Regulations for Members of the Seconded Staff; according to that case-law, it is possible to bring proceedings against acts adversely affecting an individual carried out by the management organs of the European schools. That case-law should be considered to be a subsequent practice in the application of the Convention defining the Statute of the European Schools within the meaning of Article 31(3)(b) of the Vienna Convention."

Article 32

Supplementary means of interpretation

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

(a) Leaves the meaning ambiguous or obscure; or

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

Άρθρο 32

Συμπληρωματικά μέσα ερμηνείας

Δύναται να γίνει προσφυγή σε συμπληρωματικά μέσα ερμηνείας, συμπεριλαμβανομένων των προπαρασκευαστικών εργασιών της συνθήκης και των περιστάσεων της σύναψής της, προκειμένου να επιβεβαιωθεί το νόημα που προκύπτει από την εφαρμογή του άρθρου 31, ή προκειμένου να προσδιοριστεί το νόημα, σε περίπτωση κατά την οποία η κατά το άρθρο 31 ερμηνεία:

(α) Αφήνει το νόημα ασαφές ή δυσνόητο· ή

(β) Οδηγεί σε αποτέλεσμα το οποίο τυγχάνει προδήλως άτοπο ή παράλογο.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3

"63. In interpreting the MOU, the Court will apply the rules on interpretation to be found in Articles 31 and 32 of the Vienna Convention, which it has consistently considered to be reflective of customary international law."

Case concerning Maritime Dispute (Peru v Chile) (Judgment) [2014] ICJ Rep 3

"65. The Court considers that the minutes of the 1952 Conference summarize the discussions leading to the adoption of the 1952 Santiago Declaration, rather than record an agreement of the negotiating States. Thus, they are more appropriately characterized as *travaux préparatoires* which constitute supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention on the Law of Treaties.

66. In light of the above, the Court does not need, in principle, to resort to supplementary means of interpretation, such as the *travaux préparatoires* of the 1952 Santiago Declaration and the circumstances of its conclusion, to determine the meaning of that Declaration. However, as in other cases, the Court has considered the relevant material, which confirms the above interpretation of the 1952 Santiago Declaration."

PERMANENT COURT OF ARBITRATION

Arbitration Between the Republic of Croatia and the Republic of Slovenia (Croatia v Slovenia) Case 2012-04, Final Award, June 29, 2017

"1074. The Tribunal reaches that conclusion on the basis of the ordinary meaning of the term, in accordance with the general rule of treaty interpretation set out in Article 31 of the Vienna Convention on the Law of Treaties. It has, however, also fully considered the submissions of the Parties relating to the *travaux préparatoires* of the Arbitration Agreement, attending in

particular to the changes in the wording of successive drafts of the Arbitration Agreement. If it had been necessary to have recourse to those supplementary means of interpretation in accordance with Article 32 of the Vienna Convention, the Tribunal would have come to the same conclusion."

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/21) Award (13 November 2017)
"291. The Tribunal has reached a firm conclusion on the proper interpretation of Articles 71 and 72 of the ICSID Convention by resorting to the general rule of interpretation in Article 31 of the VCLT. The Tribunal does not consider that resort to the supplementary means of interpretation in Article 32 is either justified or necessary. Nonetheless, in so far as the parties have made extensive reference to the *travaux préparatoires* for the ICSID Convention, the Tribunal proposes to make brief observations on the significance of these materials for the interpretation of Articles 71 and 72. […]
296. The Tribunal thus concludes that, whilst resort to the *travaux préparatoires* is not justified in accordance with the threshold established by Article 32 of the VCLT, the insights that can nevertheless be drawn from an examination of the travaux provide direct support for the Tribunal's interpretation of Articles 71 and 72 of the ICSID Convention."

EUROPEAN COURT OF HUMAN RIGHTS
Naït-Liman v Switzerland, App No 51357/07 (ECHR, 12 March 2018)
"192. With regard to the *travaux préparatoires*, the Court notes firstly that, in accordance with Article 32 of the Vienna Convention, these are only a "supplementary means" of interpretation of treaties. It is thus necessary to take them into account on a subsidiary basis and with a certain restraint when interpreting the terms of a treaty (see, to similar effect, the prudence expressed by the ICJ in the Case of Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility."

INTER-AMERICAN COURT OF HUMAN RIGHTS
Artavia Murillo v. Costa Rica (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 257 (28 November 2012)
"193. Moreover, according to Article 32 of the Vienna Convention, "the supplementary means of interpretation, especially the preparatory work of the treaty, can be used in order to confirm the meaning resulting from that interpretation or when it leaves an ambiguous or obscure meaning, or leads to a result which is manifestly absurd or unreasonable." This means that they are usually used only in a subsidiary manner, after the methods of interpretation set out in Article 31 of the Vienna Convention have been used, in order to confirm the meaning that was found or to establish whether ambiguity remains in the interpretation or whether the application is absurd or unreasonable."

Article 33

Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning, which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Άρθρο 33

Ερμηνεία συνθηκών επιβεβαιωμένων σε δύο ή περισσότερες γλώσσες

1. Όταν η συνθήκη επιβεβαιώθηκε ως αυθεντική σε δύο ή περισσότερες γλώσσες, το κείμενό της τυγχάνει εξ ίσου αυθεντικό σε οποιαδήποτε εκ των γλωσσών αυτών, εκτός εάν η συνθήκη ορίζει ή τα συμβαλλόμενα μέρη συμφωνούν, ότι σε περίπτωση διισταμένων γνωμών, ορισμένο κείμενο θα υπερισχύει.
2. Κείμενο συνθήκης σε γλώσσα διαφορετική από εκείνες στις οποίες επιβεβαιώθηκε ως αυθεντικό, θεωρείται αυθεντικό κείμενο μόνο εάν η συνθήκη το ορίζει ή τα μέρη συμφώνησαν σε αυτό.
3. Οι όροι της συνθήκης τεκμαίρεται ότι έχουν το ίδιο νόημα σε καθένα εκ των αυθεντικών κειμένων.
4. Με εξαίρεση την περίπτωση κατά την οποία υπερισχύει ορισμένο κείμενο σύμφωνα με την παράγραφο 1, όταν από τη σύγκριση των αυθεντικών κειμένων ανακύπτει κάποια νοηματική διαφορά, η οποία δεν εκλείπει μετά από εφαρμογή των άρθρων 31 και 32, θα υιοθετηθεί το νόημα που συμβιβάζει καλύτερα τα κείμενα, λαμβανομένου υπόψη του αντικειμένου και του σκοπού της συνθήκης.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

PERMANENT COURT OF ARBITRATION

South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) Case No 2013-19, Award on Jurisdiction and Admissibility, October 29, 2015

"216. Article 33 of the Vienna Convention on the Law of Treaties (the "Vienna Convention on the Law of Treaties" or the "Vienna Convention") addresses the interpretation of a treaty authenticated in multiple languages and provides that, unless otherwise indicated, the text is equally authoritative in each language. Article 33 of the Vienna Convention also provides that "when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted." In the present case, and noting that the Convention is silent on the resolution of differences between its different versions, the Tribunal considers that the broader exception in the non- English texts, for "disputes . . . involving historic bays or titles," best reconciles the different versions."

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Orascom TMT Investments S.à r.l. v People, Democratic Republic of Algeria (ICSID Case No ARB/12/35) Final Award (31 May 2017)
"282. The BIT was concluded in French, Dutch, and Arabic, all three texts being equally authentic. Pursuant to Article 33(3) of the VCLT, "[t]he terms of the treaty are presumed to have the same meaning in each authentic text". There is no dispute between the Parties that the term *siège social* in the French language version has the same meaning as the corresponding terms in the Dutch and Arabic versions. The dispute is about what this term means. The Tribunal notes in this respect that, despite the three languages being equally authentic, initially both Parties presented arguments almost exclusively based on the French version of the BIT. It was only in reply to an invitation from the Tribunal after the Parties' Post-hearing Briefs that they put forward materials and submissions on the Dutch and Arabic versions of the Treaty. As is shown in the subsequent analysis, the Tribunal has considered all three language versions, although the French version has attracted particular focus as a result of the Parties' pleadings and the fact that the BIT was negotiated in French."

WORLD TRADE ORGANIZATION
United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China—Report of the Appellate Body (11 March 2011) WT/DS379/AB/R
"4.75 In case of differences of meanings among authentic texts, Article 33 of the Vienna Convention on the Law of Treaties 441 (Vienna Convention) requires an interpreter to adopt the meaning which best reconciles the texts, having regard to the object and purpose of the treaty. In our view, the meanings of under that best reconcile the texts of Article X:2 in English, French, and Spanish are in the form of and in the guise of."

EUROPEAN COURT OF HUMAN RIGHTS
Perinçek v Switzerland, App No 27510/08 (ECHR, 15 October 2015)
"149. Under Article 31 § 1 of the 1969 Vienna Convention on the Law of Treaties, treaties are to 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". Under Article 33 § 3 of that Convention, which deals with the interpretation of treaties which, like the Convention, are authenticated in two or more languages, the terms of a treaty are "presumed to have the same meaning in each authentic text". Article 33 § 4 of that Convention states that when a comparison of the authentic texts discloses a difference of meaning that the application of the other rules of interpretation does not remove, the meaning that must be adopted is the one that "best reconciles the texts, having regard to the object and purpose of the treaty". These latter rules must be read as elements of the general rule of interpretation laid down in Article 31 § 1 of that Convention."

SECTION 4
TREATIES AND THIRD STATES

ΤΜΗΜΑ 4
ΣΥΝΘΗΚΕΣ ΚΑΙ ΤΡΙΤΑ ΚΡΑΤΗ

Article 34
General rule regarding third States

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

Άρθρο 34
Γενικός Κανόνας σχετικά με Τρίτα Κράτη

Μία συνθήκη δεν δημιουργεί υποχρεώσεις ή δικαιώματα για τρίτο κράτος χωρίς τη συναίνεσή του.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS

In the matter of Femi Falana v African Union, App No 001/2011 (26 June 2012)

"70. In the present case, the African Union is not a party to the Protocol. As a legal person, an international organization like the African Union will have the capacity to be party to a treaty between States if such a treaty allows an international organization to become a party. As far as an International Organization is not a party to a treaty, it cannot be subject to legal obligations arising from that treaty. This is in line with Article 34 of the 1986 Vienna Convention on the Law of Treaties between States and International Organization or between International Organizations which provides: A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization (see also Article 34 of the 1969 Vienna Convention on the Law of Treaties)."

COURT OF JUSTICE OF THE EUROPEAN UNION

Case C104/16 P (Council of the European Union v Front Populaire pour la liberation de la Saguia-el-Hamra et du Rio de Oro) Judgment (Grand Chamber) 21 December 2016

"100. Finally, under the general international-law principle of the relative effect of treaties, of which the rule contained in Article 34 of the Vienna Convention is a specific expression, treaties do not impose any obligations, or confer any rights, on third States without their consent."

Case C-266/16 (Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs Secretary of State for Environment, Food and Rural Affairs) Judgment (Grand Chamber), 27 February 2018

"63. If the territory of Western Sahara were to be included within the scope of the Association Agreement, that would be contrary to certain rules of general international law that are applicable in relations between the European Union and Kingdom of Morocco, namely the principle of self-determination, stated in Article 1 of the Charter of the United Nations, and the principle of the relative effect of treaties, of which Article 34 of the Vienna Convention is a specific expression (judgment of 21 December 2016, Council v Front Polisario, C104/16 P, EU:C:2016:973, paragraphs 88 to 93, 100, 103 to 107 and 123)."

Article 35

Treaties providing for obligations for third States

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

Άρθρο 35

Συνθήκες που προβλέπουν υποχρεώσεις για τρίτα Κράτη

Υποχρέωση ανακύπτει για τρίτο Κράτος από μία διάταξη συνθήκης αν τα συμβαλλόμενα μέρη προτίθενται μέσω της διάταξης να θεσπίσουν την υποχρέωση και το τρίτο Κράτος εκφράσει ρητά και γραπτά την αποδοχή της υποχρέωσης.

Article 36

Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.
2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Άρθρο 36

Συνθήκες που προβλέπουν δικαιώματα για τρίτα Κράτη

1. Δικαίωμα ανακύπτει για τρίτο Κράτος από μία διάταξη συνθήκης αν τα συμβαλλόμενα μέρη προτίθενται να παραχωρήσουν μέσω της διάταξης το δικαίωμα είτε στο τρίτο Κράτος, είτε σε ομάδα Κρατών στην οποία αυτό ανήκει, είτε σε όλα τα Κράτη, και το τρίτο Κράτος συναινεί σε αυτό. Η συναίνεσή του τεκμαίρεται για όσο διάστημα δεν υποδηλώνεται το αντίθετο, εκτός αν η συνθήκη ορίζει διαφορετικά.
2. Ένα Κράτος που ασκεί δικαίωμα σύμφωνα με την παράγραφο 1 θα συμμορφώνεται με τις προϋποθέσεις ενάσκησής του όπως προβλέπονται στη συνθήκη ή θεμελιώνονται σύμφωνα με τη συνθήκη.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

PERMANENT COURT OF ARBITRATION

Inspection and Control Services Limited (United Kingdom) v The Republic of Argentina, Case No 2010-9, Award on Jurisdiction, February 10, 2012

"271. According to the law of treaties, when exercising a right provided for it in a given treaty, a third party like the investor, shall comply with the conditions for the exercise of that right provided for in the treaty or established in conformity with the treaty. […] fn.299 See, in the analogous context of treaties providing for rights for third States, Article 36(2) of the VCLT: "A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty."

Article 37

Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.
2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Άρθρο 37

Ανάκληση ή τροποποίηση υποχρεώσεων ή δικαιωμάτων τρίτων Κρατών

1. Όταν μία υποχρέωση έχει ανακύψει για ένα τρίτο Κράτος σύμφωνα με το άρθρο 35, η υποχρέωση μπορεί να ανακληθεί ή να τροποποιηθεί μόνο με τη συναίνεση των συμβαλλομένων μερών και του τρίτου Κράτους, εκτός εάν προκύπτει ότι είχαν συμφωνήσει διαφορετικά.
2. Όταν ένα δικαίωμα έχει ανακύψει για ένα τρίτο Κράτος σύμφωνα με το άρθρο 36, το δικαίωμα δεν μπορεί να ανακληθεί ή να τροποποιηθεί από τα μέρη εάν θεμελιώνεται ότι το δικαίωμα προοριζόταν να είναι μη ανακλητό ή μη υποκείμενο σε τροποποίηση χωρίς τη συναίνεση του τρίτου Κράτους.

Article 38

Rules in a treaty becoming binding on third States through international custom

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

Άρθρο 38

Κανόνες σε συνθήκη που καθίστανται δεσμευτικοί για τρίτα κράτη μέσω διεθνούς εθίμου

Οι διατάξεις των άρθρων 34 με 37 δεν αποκλείουν κανόνα που έχει αποτυπωθεί σε μία συνθήκη από το να καταστεί δεσμευτικός για τρίτο Κράτος ως εθιμικός κανόνας διεθνούς δικαίου, αναγνωρισμένος ως τέτοιος.

PART IV

AMENDMENT AND MODIFICATION OF TREATIES

ΜΕΡΟΣ IV

ΑΝΑΘΕΩΡΗΣΗ ΚΑΙ ΤΡΟΠΟΠΟΙΗΣΗ ΣΥΝΘΗΚΩΝ

Article 39
General rule regarding the amendment of treaties

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

Άρθρο 39
Γενικοί κανόνες σχετικά με την αναθεώρηση των συνθηκών

Μία συνθήκη μπορεί να αναθεωρηθεί με συμφωνία των συμβαλλόμενων μερών. Οι κανόνες που αναφέρονται στο Μέρος ΙΙ εφαρμόζονται σε τέτοια συμφωνία εκτός εάν η συνθήκη ορίζει διαφορετικά.

Article 40

Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
(a) the decision as to the action to be taken in regard to such proposal;
(b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
(a) be considered as a party to the treaty as amended; and
(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Άρθρο 40

Αναθεώρηση πολυμερών συνθηκών

1. Εκτός εάν η συνθήκη ορίζει διαφορετικά, η αναθεώρηση των πολυμερών συνθηκών διέπεται από τις ακόλουθες παραγράφους.
2. Οποιαδήποτε πρόταση αναθεώρησης πολυμερούς συνθήκης μεταξύ όλων των συμβαλλομένων μερών πρέπει να κοινοποιείται σε όλα τα συμβαλλόμενα Κράτη, καθένα εκ των οποίων έχει το δικαίωμα να λάβει μέρος:
(α) Στην απόφαση σχετικά με την προς ανάληψη ενέργεια που αφορά την ως άνω πρόταση·
(β) Στην διαπραγμάτευση και σύναψη οποιασδήποτε συμφωνίας για την αναθεώρηση της συνθήκης.
3. Κάθε Κράτος που δικαιούται να αποτελέσει συμβαλλόμενο μέρος στη συνθήκη, δικαιούται επίσης να αποτελέσει συμβαλλόμενο μέρος της αναθεωρηθείσας συνθήκης.
4. Η συμφωνία αναθεώρησης δεν δεσμεύει κανένα Κράτος, το οποίο είναι ήδη συμβαλλόμενο μέρος της συνθήκης αλλά δεν καθίσταται συμβαλλόμενο μέρος της συμφωνίας αναθεώρησης· το άρθρο 30 παρ. 4 (β) εφαρμόζεται ως προς το Κράτος αυτό.
5. Κάθε Κράτος το οποίο καθίσταται συμβαλλόμενο μέρος της συνθήκης κατόπιν της θέσεως σε ισχύ της συμφωνίας αναθεώρησης και το οποίο παραλείπει να εκφράσει διαφορετική πρόθεση:
(α) θα θεωρείται συμβαλλόμενο μέρος της αναθεωρηθείσας συνθήκης· και
(β) θα θεωρείται συμβαλλόμενο μέρος της αρχικής συνθήκης σε σχέση με κάθε συμβαλλόμενο μέρος που δεν δεσμεύεται από την συμφωνία αναθεώρησης.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

WORLD TRADE ORGANIZATION

European Union—Measures Affecting Tariff Concessions on Certain Poultry Meat Products—Report of the Panel (28 March 2017) WT/DS492/R

"7.514. However, in *EC – Bananas III* (Article 21.5 – Ecuador II) / *EC – Bananas III* (Article 21.5 – US), the Appellate Body confirmed that the modification of Schedules "does not require formal amendment" pursuant to Article X of the WTO Agreement, and is not subject to the

"formal acceptance process" provided for in Article X:7 of the WTO Agreement. The Appellate Body set forth its understanding of the relationship between Article X of the WTO Agreement and Article XXVIII of the GATT 1994 as follows:

Article X of the WTO Agreement sets out rules and procedures to amend the provisions in the Multilateral Trade Agreements. Article X specifies the process and quorum required to amend particular provisions or covered agreements. Amendments, unlike waivers, are not limited in time and create new or modify existing rights and obligations for WTO Members. Special rules on acceptance and entry into force apply, depending on the provisions that are being amended and on whether the amendment "would alter the rights and obligations of the Members". Amendments to the WTO Agreement and to a Multilateral Trade Agreement in Annex 1 enter into force following a formal acceptance process pursuant to Article X:7.

The modification of Schedules of Concessions, which are an integral part of the GATT 1994, does not require a formal amendment pursuant to Article X of the WTO Agreement, but is enacted through a special procedure set out in Article XXVIII of the GATT 1994 or through multilateral rounds of tariff negotiations. Pursuant to Article XXVIII, a Member may modify or withdraw a concession annexed to the GATT 1994 by negotiation and agreement with other Members that are "primarily concerned", and in consultation with Members that have a substantial interest in the concession. Article XXVIII:2 provides that, in an agreement on the renegotiation of a concession, which may include compensatory adjustment, WTO Members "shall endeavor to maintain a general level of reciprocal and mutually advantageous concessions not less favorable to trade than that provided for in this Agreement prior to such negotiations". If an agreement cannot be reached, the modifying Member is free to modify or withdraw the concession, while other Members that are primarily concerned or have a substantial interest in the concession are free to withdraw substantially equivalent concessions initially negotiated with the modifying Member.

7.515. Thus, the Appellate Body explained that Article XXVIII is a "special procedure" through which the "modification" of a Schedule "is enacted". China has suggested that "consistent with the principle set forth in Article 40 of the Vienna Convention on the Law of Treaties, unless the treaty otherwise provides, amendments to a multilateral treaty can only occur with the participation of all contracting States". We observe however that Article 40 of the Vienna Convention is, by its own terms, a default rule that applies "unless the treaty otherwise provides". In stating that Article XXVIII is a "special procedure" through which the "modification" of a Schedule "is enacted", the Appellate Body has recognized that Article XXVIII is a sui generis procedure."

Article 41

Agreements to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
(a) the possibility of such a modification is provided for by the treaty; or
(b) the modification in question is not prohibited by the treaty and:
(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

Άρθρο 41

Συμφωνίες τροποποίησης πολυμερών συνθηκών μεταξύ ορισμένων συμβαλλομένων μερών

1. Δύο ή περισσότερα συμβαλλόμενα μέρη μιας πολυμερούς συνθήκης μπορούν να συνάψουν μεταξύ τους μια συμφωνία τροποποίησης της συνθήκης εάν:
(α) Η δυνατότητα τέτοιας τροποποίησης προβλέπεται από την ίδια τη συνθήκη· ή
(β) Η υπό εξέταση τροποποίηση δεν απαγορεύεται από την συνθήκη και:
(i) δεν επηρεάζει την απολαβή των, απορρεομένων από τη συνθήκη, δικαιωμάτων ή την εκπλήρωση των υποχρεώσεων των υπολοίπων συμβαλλομένων μερών·
(ii) δεν σχετίζεται με διάταξη, παρέκκλιση από την οποία είναι ασύμβατη με την αποτελεσματική εκπλήρωση του αντικειμένου και του σκοπού της συνθήκης στο σύνολό της.
2. Εκτός εάν η συνθήκη ορίζει διαφορετικά σε περιπτώσεις που εμπίπτουν στην παράγραφο 1 (α), τα εν λόγω συμβαλλόμενα μέρη οφείλουν να κοινοποιήσουν στα υπόλοιπα συμβαλλόμενα μέρη την πρόθεσή τους να συνάψουν τη συμφωνία και την τροποποίηση της συνθήκης που προβλέπεται σε αυτή.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v Italian Republic (ICSID Case No ARB/14/3) Award (27 December 2016)

"245. The Respondent argues that this issue must be assessed in light of Articles 30 and 41 of the VCLT…. Lastly, the Respondent alleges that Article 41(l)(a) of the VCLT allows parties to an agreement to enter into another treaty which modifies the initial agreement among themselves. According to the Respondent, the Lisbon Treaty respects the spirit of the VCLT because it did not impact the rights of other Contracting Parties or the performance of their obligations under the ECT."

Electrabel S.A. v Republic of Hungary (ICSID Case No ARB/07/19) Decision on Jurisdiction, Applicable Law and Liability (30 November 2012)

"3.43. Article 41 VCLT ("Agreements to modify multilateral treaties between certain of the parties only") provides: "1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if: (a) the possibility of

such a modification is provided for by the treaty; or (b) the modification in question is not prohibited by the treaty and: (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides."

Vattenfall AB and others v Federal Republic of Germany (ICSID Case No ARB/12/12) Decision on the Achmea Issue (31 August 2018)
"219. Regarding Article 41(1) VCLT, this provides that "two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if . . . (b) The modification in question is not prohibited by the treaty". It is further required that the modification does not affect the enjoyment by the other parties of their rights and performance of their obligations, and that the modification in question "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.
220. The EC relies on this provision to assert that the following legal rules and provisions "could be interpreted" as a modification of the ECT, on the basis that they "have been re-affirmed by Germany and Sweden subsequent to the ratification of the ECT": The investment protection rules of [EU] law, as well as the principles concerning the competences and the system of judicial protection, including in particular the general principle of autonomy of [EU] law, Articles 4(3) and 19 TEU and Articles 267 and 344 TFEU . . . 21.The Tribunal is not persuaded by this argument. It is unclear what precise modification of the ECT is alleged to have taken place. Moreover, the Tribunal considers that the modification proposed by the EC would be "prohibited by the treaty", contrary to Article 41(1)(b) VCLT. Specifically, Article 16 ECT prevents the EU Treaties from being construed so as to derogate from more favorable rights of the Investor in Parts III and V ECT, including the right to dispute resolution."

WORLD TRADE ORGANIZATION
*Peru—Additional Duty on Imports of Certain Agricultural Products—Report of the Appellate Body (*31 July 2015) WT/DS475/AB/R
"5.111. In any event, even assuming arguendo that the provisions of the FTA allowed Peru to maintain a WTO-inconsistent PRS, we are not convinced that, as Peru suggested before the Panel, such alleged modification as between the FTA parties would be subject to Article 41 of the Vienna Convention. Part IV of the Vienna Convention, which is entitled "Amendment and Modification of Treaties", provides rules for the modifications of treaty terms. In particular, Article 41 concerns "Agreements to modify multilateral treaties between certain of the parties only." Before the Panel, Peru seemed itself to rely on the distinction that the Vienna Convention draws between rules of interpretation and rules concerning modifications, when it referred to Article 41 of the Vienna Convention in making its arguments that the FTA provisions modified the relevant WTO provisions between Peru and Guatemala.
5.112. Nevertheless, we note that the WTO agreements contain specific provisions addressing amendments, waivers, or exceptions for regional trade agreements, which prevail over the general provisions of the Vienna Convention, such as Article 41. This is particularly true in the case of FTAs considering that Article XXIV of the GATT 1994 specifically permits departures from certain WTO rules in FTAs. However, Article XXIV conditions such departures on the fulfilment of the rule that the level of duties and other regulations of commerce, applicable in

each of the FTA members to the trade of non-FTA members, shall not be higher or more restrictive than those applicable prior to the formation of the FTA. […]

5.119. Moreover, while Peru is asking us to reverse the Panel's findings that, "inasmuch as the Free Trade Agreement signed by Peru and Guatemala in December 2011 had not entered into force, it was not necessary for the Panel to rule on whether the parties could, by means of the FTA, modify as between themselves their rights and obligations under the covered agreements", on appeal, Peru has not challenged the Panel's finding that an agreement that has not yet entered into force, such as the FTA, cannot modify the rights and obligations under the covered agreements. In the light of this, we find that the Panel did not err in declining to make findings as to whether the FTA modified the WTO rights and obligations between Peru and Guatemala because the FTA was not in force."

PART V

INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1
GENERAL PROVISIONS

ΜΕΡΟΣ V
ΑΚΥΡΟΤΗΤΑ, ΤΕΡΜΑΤΙΣΜΟΣ ΚΑΙ ΑΝΑΣΤΟΛΗ ΕΦΑΡΜΟΓΗΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

ΤΜΗΜΑ 1
ΓΕΝΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Article 42
Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Άρθρο 42
Εγκυρότητα και διατήρηση της ισχύος των συνθηκών

1. Η εγκυρότητα συνθήκης ή της συναίνεσης Κράτους προς δέσμευση από αυτήν μπορούν να αμφισβητηθούν μόνο κατ' εφαρμογή της παρούσας Σύμβασης.
2. Ο τερματισμός συνθήκης, η καταγγελία αυτής ή η αποχώρηση συμβαλλόμενου μέρους από αυτήν, μπορούν να λάβουν χώρα μόνο ως αποτέλεσμα εφαρμογής των διατάξεων της ίδιας της συνθήκης ή της παρούσας Σύμβασης. Ο ίδιος κανόνας ισχύει και αναφορικά με την αναστολή εφαρμογής συνθήκης.

Article 43

Obligations imposed by international law independently of a treaty

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

Άρθρο 43

Υποχρεώσεις επιβεβλημένες από το Διεθνές Δίκαιο, ανεξαρτήτως συνθήκης

Η ακυρότητα, ο τερματισμός ή η καταγγελία συνθήκης, η αποχώρηση μέρους από αυτήν ή η αναστολή εφαρμογής της, ως αποτέλεσμα της εφαρμογής της παρούσας Σύμβασης ή των διατάξεων της συνθήκης, δεν επηρεάζει με κανένα τρόπο την υποχρέωση Κράτους να εκπληρώσει οποιαδήποτε υποχρέωσή του εμπεριεχόμενη στη συνθήκη, την οποία θα όφειλε να εκπληρώσει σύμφωνα με το διεθνές δίκαιο και ανεξαρτήτως συνθήκης.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/21) Award (13 November 2017)

"245. […] the Claimants submit, the Respondent's obligation to respect its unconditional consent to ICSID arbitration is independent of the ICSID Convention. On this point, the Claimants cite Article 43 of the VCLT, which states in relevant part: "denunciation of a treaty. . . as a result of the application . . . of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty…

264. According to the Claimants, "this article is an outgrowth of the principle that the denunciation of a treaty does not impair obligations which a denouncing State has assumed independently of that Treaty." Its application to this case means that "denunciation of the ICSID Convention does not in any way impair the Respondent's duty to fulfill its obligations under the BIT."

Venoklim Holding B.V. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/22) Award (3 April 2015)

"58. […] aparte de las obligaciones y condiciones contenidas en cada tratado, la Convención de Viena ha previsto en el Artículo 43 una obligación de carácter general consistente en el respeto de las obligaciones adquiridas: "Obligaciones impuestas por el derecho internacional independientemente de un tratado. La nulidad, terminación o denuncia de un tratado, el retiro de una de las partes o la suspensión de la aplicación del tratado, cuando resulten de la aplicación de la presente Convención o de las disposiciones del tratado, no menoscabarán en nada el deber de un Estado de cumplir toda obligación enunciada en el tratado a la que esté sometido en virtud del derecho internacional independientemente de ese tratado"

[Original text in Spanish]

["58. [...]a part from the obligations and conditions contained in each treaty, the Vienna Convention has established in Article 43 a general obligation consisting of respecting the obligations acquired: "Obligations imposed by international law independently of a treaty. The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the

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

Article 44

Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.
3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
(a) the said clauses are separable from the remainder of the treaty with regard to their application;
(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
(c) continued performance of the remainder of the treaty would not be unjust.
4. In cases falling under articles 49 and 50, the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.
5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Άρθρο 44

Δυνατότητα διαχωρισμού των διατάξεων συνθήκης

1. Το δικαίωμα συμβαλλόμενου μέρους σε συνθήκη, το οποίο προβλέπεται από την ίδια τη συνθήκη ή ανακύπτει βάσει του άρθρου 56, να καταγγείλει τη συνθήκη, να αποχωρήσει από αυτήν ή να αναστείλει την εφαρμογή της, μπορεί να ασκηθεί μόνο ως προς το σύνολο της συνθήκης, εκτός αν η συνθήκη ορίζει διαφορετικά ή έχουν συμφωνήσει διαφορετικά τα συμβαλλόμενα μέρη.
2. Επίκληση λόγου ακύρωσης ή τερματισμού συνθήκης, αποχώρησης από αυτήν ή αναστολής εφαρμογής της, αναγνωρισμένου από την παρούσα Σύμβαση, μπορεί να πραγματοποιηθεί μόνο ως προς το σύνολο της συνθήκης, εκτός των προβλεπόμενων στις ακόλουθες παραγράφους ή στο άρθρο 60.
3. Αν ο λόγος σχετίζεται αποκλειστικά με συγκεκριμένες διατάξεις της συνθήκης, μπορεί να πραγματοποιηθεί επίκλησή του μόνο ως προς αυτές, όταν:
(α) Οι αναφερθείσες διατάξεις είναι διαχωρίσιμες από την υπόλοιπη συνθήκη όσον αφορά την εφαρμογή τους·
(β) Διαφαίνεται από τη συνθήκη ή προκύπτει με άλλο τρόπο ότι η αποδοχή αυτών των διατάξεων δεν αποτέλεσε ουσιώδη βάση της συναίνεσης του άλλου συμβαλλόμενου μέρους ή των άλλων συμβαλλόμενων μερών να δεσμευτούν από ολόκληρη τη συνθήκη· και
(γ) Η συνέχιση εφαρμογής της υπόλοιπης συνθήκης δεν θα ήταν άδικη.
4. Στις περιπτώσεις που εμπίπτουν στα άρθρα 49 και 50, το Κράτος που δικαιούται να επικαλεστεί απάτη ή δωροδοκία, μπορεί να το κάνει είτε ως προς το σύνολο της συνθήκης ή σύμφωνα με την παράγραφο 3, ως προς συγκεκριμένες διατάξεις μόνο.
5. Στις περιπτώσεις που εμπίπτουν στα άρθρα 51, 52 και 53, δεν επιτρέπεται ο διαχωρισμός των διατάξεων της συνθήκης.

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Venoklim Holding B.V. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/22) Award (3 April 2015)
"56. […] cabe destacar que según el Artículo 44 de la Convención de Viena sobre el Derecho de los Tratados (la "Convención de Viena"), la denuncia es un derecho de cada Estado siempre y cuando el tratado que será objeto de la denuncia contemple tal posibilidad o, que se cumplan las condiciones previstas en el Artículo 56 de la misma Convención. Mediante el uso de la denuncia un Estado puede poner fin, en lo que a él respecta, a un tratado del que era parte retirándose de este."

[Original text in Spanish]
[" [...] It should be noted that according to Article 44 of the Vienna Convention on the Law of Treaties (the "Vienna Convention"), the denunciation is a right of each State as long as the treaty that will be the subject of the complaint contemplates such possibility or that the conditions set forth in Article 56 of the same Convention are met. By using the complaint, a State can end, as far as it is concerned, a treaty of which it was a party, by withdrawing from it."]

Article 45

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 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

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

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

Άρθρο 45

Απώλεια του δικαιώματος επίκλησης λόγου ακύρωσης, τερματισμού, αποχώρησης ή αναστολής εφαρμογής της συνθήκης

Ένα Κράτος δεν μπορεί πλέον να επικαλεστεί λόγο ακύρωσης, τερματισμού, αποχώρησης ή αναστολής εφαρμογής της συνθήκης σύμφωνα με τα άρθρα 46 έως 50 ή τα άρθρα 60 και 62, εάν, αφού έλαβε γνώση των γεγονότων:

(α) Ρητώς συμφώνησε ότι η συνθήκη είναι έγκυρη ή διατηρείται σε ισχύ ή εξακολουθεί να εφαρμόζεται, αναλόγως της περίστασης· ή

(β) Συνάγεται εκ της συμπεριφοράς του ότι έχει αποδεχτεί την εγκυρότητα της συνθήκης ή τη διατήρηση της ισχύος ή της εφαρμογής της, αναλόγως της περίστασης.

SECTION 2
INVALIDITY OF TREATIES

ΤΜΗΜΑ 2
ΑΚΥΡΟΤΗΤΑ ΤΩΝ ΣΥΝΘΗΚΩΝ

Article 46

Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Άρθρο 46

Διατάξεις εσωτερικού δικαίου σχετικά με την αρμοδιότητα σύναψης συνθηκών

1. Ένα Κράτος δεν μπορεί να επικαλεστεί το γεγονός ότι η συναίνεση του προς δέσμευση από μία συνθήκη έχει εκφραστεί κατά παράβαση διάταξης του εσωτερικού του δικαίου σχετικά με την αρμοδιότητα να συνάπτει συνθήκες προκειμένου να ακυρώσει αυτή του την συναίνεσή, εκτός και αν η παραβίαση αυτή ήταν προφανής και αφορούσε ένα κανόνα θεμελιώδους σημασίας του εσωτερικού του δικαίου.
2. Μία παράβαση είναι προφανής εάν θα ήταν αντικειμενικά εμφανής σε οποιοδήποτε Κράτος συμπεριφέρεται εν προκειμένω σύμφωνα με την συνήθη πρακτική και την καλή πίστη.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES
INTERNATIONAL COURT OF JUSTICE

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3

"49. In this case, there is no reason to suppose that Kenya was aware that the signature of the Minister may not have been sufficient under Somali law to express, on behalf of Somalia, consent to a binding international agreement. As already noted, the Prime Minister of the Transitional Federal Government of Somalia had, by full powers "authorized and empowered" the Minister, under international law, to sign the MOU. No caveat relating to a need for ratification was mentioned in those full powers, nor in the MOU itself, which on the contrary provided for its entry into force upon signature. As the Court has previously observed, "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" (ibid., p. 430, para. 266). Moreover, even after the MOU had been rejected by the Somali Parliament, the Prime Minister of Somalia did not question its validity in his letter to the Secretary-General of the United Nations dated 19 August 2009. In this respect, the Court observes that under customary international law, reflected in Article 45 of the Vienna Convention, a State may not invoke a ground for invalidating a treaty on the basis of, inter alia, provisions of its internal law regarding competence to conclude treaties if, after having become aware of the facts, it must by reason of its conduct be considered as having acquiesced in the validity of that treaty. Somalia did not begin to express its doubts in this respect until sometime later, in March 2010 (see paragraph 38 above). The Court further notes

that Somalia has never directly notified Kenya of any alleged defect in its consent to be bound by the MOU."

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)
Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v Italian Republic (ICSID Case No ARB/14/3) Award (27 December 2016)
"283. […] Article 46 of the VCLT provides that a State may not invoke provisions of its internal law regarding competence to conclude treaties to invalidate a treaty unless it was a manifest violation of a rule of fundamental importance. While EU law operates on both an internal and international plane, a similar principle must apply. Even if, as a matter of EC law, the EC has exclusive competence over matters of internal investment, the fact is that Member States to the EU signed the ECT without qualification or reservation. The inter se obligations in the ECT are not somehow invalid or inapplicable because of an allocation of competence that the EC says can be inferred from a set of EU laws and regulations dealing with investment. The more likely explanation, consistent with the text of the ECT, is that, at the time the ECT was signed, the competence was a shared one."

EUROPEAN COURT OF HUMAN RIGHTS
G.S.B. v Switzerland, App No 28601/11 (ECHR, 22 December 2015)
"61. The Government affirmed that a further argument in support of the existence of a sufficient legal basis was to be found in the 1969 Vienna Convention on the Law of Treaties. Under the terms of Article 46 of that convention, a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was "manifest" (that is to say – according to paragraph 2 of the same article - objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith) and concerned a rule of its internal law of fundamental importance."

Article 47

Specific restrictions on authority to express the consent of a State

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

Άρθρο 47

Ειδικοί περιορισμοί στην αρμοδιότητα έκφρασης της συναίνεσης ενός Κράτους

Εάν η αρμοδιότητα αντιπροσώπου να εκφράσει τη συναίνεση ενός Κράτους προς δέσμευση από μία συγκεκριμένη συνθήκη υπόκειται σε συγκεκριμένο περιορισμό, η παράλειψη σεβασμού του περιορισμού δεν μπορεί να αποτελέσει αντικείμενο επίκλησης με σκοπό την ακύρωση της συναίνεσης που εκφράστηκε από αυτόν, εκτός και αν ο περιορισμός κοινοποιήθηκε στα υπόλοιπα Κράτη που μετείχαν στις διαπραγματεύσεις πριν από την έκφραση αυτής της συναίνεσης.

Article 48

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.
3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Άρθρο 48

Πλάνη

Ένα Κράτος μπορεί να επικαλεσθεί πλάνη προκειμένου να ακυρώσει τη συναίνεσή του προς δέσμευση από μία συνθήκη εάν η πλάνη σχετίζεται με ένα γεγονός ή μία κατάσταση που θεωρήθηκε από αυτό το Κράτος ότι υφίσταται κατά τη στιγμή σύναψης της συνθήκης και αποτέλεσε την ουσιώδη βάση της συναίνεσής του προς δέσμευση από τη συνθήκη.
Η παράγραφος 1 δεν εφαρμόζεται εάν το εν λόγω Κράτος συνεισέφερε στη πλάνη με τη δική του συμπεριφορά ή εάν οι περιστάσεις ήταν τέτοιες ώστε να αντιληφθεί το Κράτος την πιθανή πλάνη.
Μία πλάνη που σχετίζεται μόνο με τη διατύπωση του κειμένου μίας συνθήκης δεν επηρεάζει την εγκυρότητά της· τότε εφαρμόζεται το άρθρο 79.

Article 49

Fraud

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

Άρθρο 49

Απάτη

Εάν ένα Κράτος έχει παρακινηθεί να συνάψει μία συνθήκη δια της απατηλής συμπεριφοράς άλλου Κράτους που μετέχει στις διαπραγματεύσεις, το Κράτος μπορεί να επικαλεστεί την απάτη προκειμένου να ακυρώσει τη συναίνεσή του προς δέσμευση από τη συνθήκη.

Article 50

Corruption of a representative of a State

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

Άρθρο 50

Δωροδοκία αντιπροσώπου κράτους

Εάν η έκφραση της συναίνεσης ενός Κράτους προς δέσμευση από μία συνθήκη έχει επιτευχθεί μέσω της δωροδοκίας αντιπροσώπου του, με άμεσο ή έμμεσο τρόπο από άλλο Κράτος που μετέχει στις διαπραγματεύσεις, το Κράτος μπορεί να επικαλεστεί αυτή τη δωροδοκία προκειμένου να ακυρώσει τη συναίνεσή του προς δέσμευση από τη συνθήκη.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Metal Tech Ltd. v the Republic of Uzbekistan (ICSID Case No ARB/10/3) Award (4 October 2013)

"290. In effect, Article 50 of the VCLT allows a State whose consent has been obtained through corruption to invalidate a treaty and Article 52(1)(c) of the ICSID Convention provides for the annulment of an award if there was corruption on the part of a member of an ICSID tribunal. The international community of States has thereafter sought to address the issue of corruption with a targeted effort to eliminate corrupt practices in the public service sector and criminalize corruption in domestic legal orders. For instance, on 17 December 1979 the General Assembly of the United Nations adopted a "Code of Conduct for Law Enforcement Officials". In the same year, the UN prepared a Draft International Agreement on Illicit Payments. Also, in 1997, the General Assembly adopted a Declaration against Corruption and Bribery in International Commercial Transactions."

Article 51

Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Άρθρο 51

Εξαναγκασμός αντιπροσώπου κράτους

Η έκφραση συναίνεσης ενός Κράτους που έχει επιτευχθεί δια του εξαναγκασμού του αντιπροσώπου του μέσω πράξεων ή απειλών στρεφόμενων εναντίον του στερείται οποιασδήποτε νομικής ισχύος.

Article 52

Coercion of a State by the threat or use of force

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

Άρθρο 52

Εξαναγκασμός κράτους μέσω απειλής ή χρήσης βίας

Η συνθήκη είναι άκυρη εάν η σύναψή της επιτεύχθηκε δια της απειλής ή χρήσης βίας κατά παράβαση των αρχών του διεθνούς δικαίου εμπεριεχομένων στον Χάρτη των Ηνωμένων Εθνών.

Article 53

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

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

Άρθρο 53

Συνθήκες που συγκρούονται με αναγκαστικό κανόνα γενικού διεθνούς δικαίου ("jus cogens")

Η συνθήκη είναι άκυρη αν, κατά τη στιγμή της σύναψής της, συγκρούεται με αναγκαστικό κανόνα του γενικού διεθνούς δικαίου. Για τους σκοπούς της παρούσας Σύμβασης, αναγκαστικός κανόνας του γενικού διεθνούς δικαίου είναι ένας κανόνας που είναι αποδεκτός και αναγνωρισμένος από τη διεθνή κοινότητα των Κρατών στο σύνολό της ως κανόνας από τον οποίο δεν επιτρέπεται παρέκκλιση και ο οποίος μπορεί να τροποποιηθεί μόνο από μεταγενέστερο κανόνα του γενικού διεθνούς δικαίου με τον ίδιο χαρακτήρα.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Jurisdictional Immunities of the State (Germany v Italy: Greece intervening) Judgment [2012] ICJ Rep 99

"94. In the present case, the violation of the rules prohibiting murder, deportation and slave labour took place in the period 1943-1945. The illegality of these acts is openly acknowledged by all concerned. The application of rules of State immunity to determine whether or not the Italian courts have jurisdiction to hear claims arising out of those violations cannot involve any conflict with the rules which were violated. Nor is the argument strengthened by focusing upon the duty of the wrongdoing State to make reparation, rather than upon the original wrongful act. The duty to make reparation is a rule which exists independently of those rules which concern the means by which it is to be effected. The law of State immunity concerns only the latter; a decision that a foreign State is immune no more conflicts with the duty to make reparation than it does with the rule prohibiting the original wrongful act. Moreover, against the background of a century of practice in which almost every peace treaty or post-war settlement has involved either a decision not to require the payment of reparations or the use of lump sum settlements and set-offs, it is difficult to see that international law contains a rule requiring the payment of full compensation to each and every individual victim as a rule accepted by the international community of States as a whole as one from which no derogation is permitted.

95. To the extent that it is argued that no rule which is not of the status of jus cogens may be applied if to do so would hinder the enforcement of a jus cogens rule, even in the absence of a direct conflict, the Court sees no basis for such a proposition. A jus cogens rule is one from which no derogation is permitted but the rules which determine the scope and extent of jurisdiction and when that jurisdiction may be exercised do not derogate from those substantive rules which possess jus cogens status, nor is there anything inherent in the concept of jus cogens which would require their modification or would displace their application. The Court has taken that approach in two cases, notwithstanding that the effect was that a means by which a jus cogens rule might be enforced was rendered unavailable. In Armed Activities, it held that

the fact that a rule has the status of jus cogens does not confer upon the Court a jurisdiction which it would not otherwise possess (Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 32, para. 64, and p. 52, para. 125). In Arrest Warrant, the Court held, albeit without express reference to the concept of jus cogens, that the fact that a Minister for Foreign Affairs was accused of criminal violations of rules which undoubtedly possess the character of jus cogens did not deprive the Democratic Republic of the Congo of the entitlement which it possessed as a matter of customary international law to demand immunity on his behalf (Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p. 24, para. 58, and p. 33, para. 78). The Court considers that the same reasoning is applicable to the application of the customary international law regarding the immunity of one State from proceedings in the courts of another."

INTERNATIONAL CRIMINAL COURT

Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v Bosco Ntaganda, ICC-01/04-02/06, Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9, January 4, 2017

"51. The Chamber finds additional support for the interpretation that the scope of protection against sexual violence under international humanitarian law is not to be understood as being limited to only certain categories of persons, in the fact that sexual slavery has been recognised as constituting a particular form of slavery. In this regard, the Chamber recalls that the first element of the Elements of Crimes of the war crime of sexual slavery is identical to the Statute's definition of 'enslavement', asset out in Article 7(2)(c), and is based on the definition of slavery as included in the Slavery Convention of 1926. As the prohibition of slavery has jus cogens status under international law, the prohibition of sexual slavery has the same status, and as such, no derogation is permissible. […] fn.127. See Article 53 of the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 18232, 23 May 1969. Indeed, in the Krnojelac case, the ICTY noted that 'the prohibition against slavery in situations of armed conflict is an inalienable, non-derogable and fundamental right, one of the core rules of general customary and conventional international law' (ICTY, Prosecutor v. Krnojelac, Case No. IT-97-25-T, Trial Judgment, 15 March 2002, para. 353)"

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v Argentine Republic (ICSID Case No ARB/03/23) Award (11 June 2012)

"895. Article 53, which is titled, ―Treaties conflicting with a peremptory norm of general international law (jus cogens), provides: A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character […]

909. […] It is common ground that the Tribunal should be sensitive to international jus cogens norms, including basic principles of human rights. As defined by Article 53 of the Vienna Convention, such norms include standards ―accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted."

EUROPEAN COURT OF HUMAN RIGHTS

Al-Dulimi and Montana Management Inc. v Switzerland, App No 5809/08 (ECHR, 21 June 2016)

"57. On jus cogens: Draft Articles on State Responsibility with commentaries were adopted by the ILC at its fifty-third session, in 2001, and submitted to the General Assembly of the United Nations as part of the ILC's report covering the work of that session (Document A/56/10, ILC Yearbook, 2001, vol. II(2)). In so far as relevant to the present case, Article 26 and its commentary (adopted together with the Article itself) read as follows (footnotes omitted):

Article 26 – Compliance with Peremptory Norms

"Nothing in this Chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law."

Commentary

"[...] 5. The criteria for identifying peremptory norms of general international law are stringent. Article 53 of the Vienna Convention requires not merely that the norm in question should meet all the criteria for recognition as a norm of general international law, binding as such, but further that it should be recognised as having a peremptory character by the international community of States as a whole. So far, relatively few peremptory norms have been recognised as such. But various tribunals, national and international, have affirmed the idea of peremptory norms in contexts not limited to the validity of treaties. Those peremptory norms that are clearly accepted and recognised include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to selfdetermination. […]

136. Before the Federal Court, the applicants argued that the procedural safeguards enshrined in Article 14 of the ICCPR and Article 6 of the Convention constituted a norm of jus cogens as a result of which Resolution 1483 (2003) lost its binding effect. The Court refers to the terms of Article 53 of the Vienna Convention on the Law of Treaties, which defines jus cogens as "a peremptory norm of general international law... 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". The Court observes that the guarantees of a fair hearing and in particular the right of access to a court for the purposes of Article 6 § 1 occupy a central position in the Convention. As the Court held in Golder, "[t]he principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally 'recognised' fundamental principles of law" (See Golder, cited above, § 35). Nevertheless, despite their importance, the Court does not consider these guarantees to be among the norms of jus cogens in the current state of international law (see paragraph 57 above)."

SECTION 3
TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

ΤΜΗΜΑ 3
ΤΕΡΜΑΤΙΣΜΟΣ ΚΑΙ ΑΝΑΣΤΟΛΗ ΕΦΑΡΜΟΓΗΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

Article 54
Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:
(a) in conformity with the provisions of the treaty; or
(b) at any time by consent of all the parties after consultation with the other contracting States.

Άρθρο 54
Τερματισμός ή αποχώρηση από συνθήκη βάσει των διατάξεων της ή με τη συναίνεση των συμβαλλόμενων μερών

Ο τερματισμός μιας συνθήκης ή η αποχώρηση από αυτήν από ένα συμβαλλόμενο μέρος δύναται να πραγματοποιηθεί:
(α) Σύμφωνα με τις διατάξεις της συνθήκης· ή
(β) Οποτεδήποτε με τη συναίνεση όλων των συμβαλλόμενων μερών κατόπιν διαβούλευσης με τα λοιπά συμβαλλόμενα Κράτη.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES
COURT OF JUSTICE OF THE EUROPEAN UNION

Case T91/10 *Lucchini SpA v European Commission* [2014] Judgment (Eighth Chamber)
"112. In the context of its second plea, the applicant submits that the contested decision is unlawful since, once the ECSC Treaty had expired, the Commission no longer had competence to adopt the contested decision on the basis of Article 65(1) CS.
113. In the first place, the expiry of the ECSC Treaty necessarily meant that the Commission no longer had competence to apply its provisions.
114. First, in accordance with Articles 54 and 70 of the Vienna Convention on the Law of Treaties of 23 May 1969, a convention between States that has expired can no longer serve as the basis for obligations or found competence, unless the contracting States express a contrary intention. Article 65(1) CS cannot, therefore, be applied retroactively, even as to its substantive content', unless there is a specific transitional provision, which there is not. […]
136. Although the change from the legal framework of the ECSC Treaty to that of the EC Treaty has led, since 24 July 2002, to a change of legal bases, procedures and applicable substantive rules, that change is part of the unity and continuity of the Community legal order and its objectives (Case T-25/04 González y Díez v Commission [2007] ECR II-3121, paragraph 55, ArcelorMittal Luxembourg and Others v Commission, cited in paragraph 131 above, paragraph 59, and ThyssenKrupp Stainless v Commission, cited in paragraph 124 above, paragraph 80, confirmed on appeal by ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others, cited in paragraph 130 above, paragraphs 60 and 63, and ThyssenKrupp Nirosta v Commission, cited in paragraph 130 above, paragraphs 71 and 73). […]

145. That being so, it would be contrary to the objectives and the coherence of the Treaties and irreconcilable with the continuity of the legal order of the European Union if the Commission were not to have jurisdiction to ensure the uniform application of the rules deriving from the ECSC Treaty which continue to produce effects even after the expiry of that treaty (see, to that effect, Case C-119/05 Lucchini [2007] ECR I-6199, paragraph 41)."

Article 55

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

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

Άρθρο 55

Μείωση των συμβαλλομένων μερών πολυμερούς συνθήκης σε αριθμό μικρότερο από τον αναγκαίο για την θέση της σε ισχύ

Εκτός εάν η συνθήκη άλλως ορίζει, μία πολυμερής συνθήκη δεν λήγει μόνο λόγω του γεγονότος ότι ο αριθμός των συμβαλλόμενων μερών μειώθηκε σε αριθμό μικρότερο από τον αναγκαίο για την θέση της σε ισχύ.

Article 56

Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
(a) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
(b) A right of denunciation or withdrawal may be implied by the nature of the treaty.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Άρθρο 56

Καταγγελία ή αποχώρηση από συνθήκη που δεν περιλαμβάνει διάταξη σχετικά με τερματισμό, καταγγελία ή αποχώρηση

1. Συνθήκη, η οποία δεν περιλαμβάνει διάταξη σχετικά με τον τερματισμό της και η οποία δεν προβλέπει την καταγγελία ή αποχώρηση από αυτή, δεν υπόκειται σε καταγγελία ή αποχώρηση εκτός εάν:
(α) Προκύπτει ότι τα συμβαλλόμενα μέρη είχαν την πρόθεση να δεχθούν την δυνατότητα καταγγελίας ή αποχώρησης· ή
(β) Το δικαίωμα καταγγελίας ή αποχώρησης από αυτή συνάγεται από τη φύση της συνθήκης.
2. Ένα συμβαλλόμενο μέρος γνωστοποιεί σε προθεσμία όχι μικρότερη των δώδεκα μηνών την πρόθεσή του να καταγγείλει ή να αποχωρήσει από την συνθήκη βάσει της παραγράφου 1.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Venoklim Holding B.V. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/22) Award (3 April 2015)

"56. First, it should be noted that according to Article 44 of the Vienna Convention on the Law of Treaties (the "Vienna Convention"), denunciation is a right of each State provided that the treaty that will be the subject of the complaint consider such a possibility or that the conditions set forth in Article 56 of the same Convention are met. Through the use of denunciation, a State may terminate, as far as it is concerned, a treaty of which it was a party, withdrawing from it.
[Original text in Spanish]
["Primero, cabe destacar que según el Artículo 44 de la Convención de Viena sobre el Derecho de los Tratados (la "Convención de Viena"), la denuncia es un derecho de cada Estado siempre y cuando el tratado que será objeto de la denuncia contemple tal posibilidad o, que se cumplan las condiciones previstas en el Artículo 56 de la misma Convención. Mediante el uso de la denuncia un Estado puede poner fin, en lo que a él respecta, a un tratado del que era parte retirándose de este."]

Article 57

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

The operation of a treaty in regard to all the parties or to a particular party may be suspended:
(a) In conformity with the provisions of the treaty; or
(b) At any time by consent of all the parties after consultation with the other contracting States.

Άρθρο 57

Αναστολή εφαρμογής συνθήκης βάσει των διατάξεων της ή με τη συναίνεση των συμβαλλομένων μερών

Η εφαρμογή μιας συνθήκης δύναται να ανασταλεί ως προς όλα τα συμβαλλόμενα μέρη ή ως προς ένα συγκεκριμένο συμβαλλόμενο μέρος:
(α) Σύμφωνα με τις διατάξεις της συνθήκης· ή
(β) Οποτεδήποτε με τη συναίνεση όλων των συμβαλλομένων μερών κατόπιν διαβούλευσης με τα λοιπά συμβαλλόμενα Κράτη.

Article 58

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

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

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

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

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

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

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

Άρθρο 58

Αναστολή εφαρμογής πολυμερούς συνθήκης κατόπιν συμφωνίας ορισμένων μόνο συμβαλλόμενων μερών

1. Δύο ή περισσότερα συμβαλλόμενα μέρη σε μία πολυμερή συνθήκη μπορούν να συνάψουν συμφωνία για την αναστολή της εφαρμογής διατάξεων της συνθήκης, προσωρινά και μεταξύ τους μόνο, εάν:

(α) Η δυνατότητα τέτοιας αναστολής προβλέπεται από τη συνθήκη· ή

(β) Η εν λόγω αναστολή δεν απαγορεύεται από τη συνθήκη και:

(i) Δεν επηρεάζει την απολαβή από τα άλλα συμβαλλόμενα μέρη των δικαιωμάτων τους από τη συνθήκη ή την εκτέλεση των υποχρεώσεών τους·

(ii) Δεν είναι ασύμβατη με το αντικείμενο και το σκοπό της συνθήκης.

2. Με εξαίρεση τις περιπτώσεις της παραγράφου 1 (α) όπου η συνθήκη άλλως ορίζει, τα εν λόγω συμβαλλόμενα μέρη γνωστοποιούν στα υπόλοιπα μέρη την πρόθεσή τους να συνάψουν συμφωνία και τις διατάξεις της συνθήκης, της οποίας την εφαρμογή σκοπεύουν να αναστείλουν.

Article 59

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

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

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

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

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

Άρθρο 59

Τερματισμός ή αναστολή εφαρμογής συνθήκης που επέρχεται από τη σύναψη μεταγενέστερης συνθήκης

1. Μία συνθήκη χωρίς αυτό θεωρείται ότι έχει τερματιστεί αν όλα τα συμβαλλόμενα σε αυτή μέρη συνάψουν μεταγενέστερη συνθήκη σε σχέση με το ίδιο αντικείμενο και:

(α) Προκύπτει από τη μεταγενέστερη συνθήκη ή θεμελιώνεται άλλως ότι τα μέρη επεδίωξαν το εν λόγω αντικείμενο να διέπεται από αυτή τη συνθήκη· ή

(β) Οι διατάξεις της μεταγενέστερης συνθήκης είναι σε τέτοιο βαθμό ασύμβατες με αυτές τις προγενέστερης ώστε οι δύο συμβάσεις είναι αδύνατο να εφαρμοστούν ταυτόχρονα.

2. Θεωρείται ότι έχει ανασταλεί η λειτουργία της προγενέστερης συνθήκης μόνο αν προκύπτει από τη μεταγενέστερη ή θεμελιώνεται με άλλο τρόπο ότι αυτή ήταν η πρόθεση των συμβαλλομένων μερών.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Electrabel S.A. v the Republic of Hungary (ICSID Case No ARB/07/19) Award (25 November 2015)

"3.45. The Tribunal notes that, in this case, Article 59 is not invoked by either party or the European Commission. It also notes that Articles 60-63 VCLT are likewise not invoked in these proceedings, neither by the Respondent nor the European Commission to contend that the ECT has been terminated or suspended as a consequence of any breach of the ECT, or that the ECT is impossible to perform or that there has been a fundamental change of circumstances. […]

4.176. As regards the substantive protections in Part III of the ECT, the Tribunal does not consider that the ECT and EU law share the same subject-matter; and, accordingly, it considers that Article 16 ECT is inapplicable."

Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v Romania (ICSID Case No ARB/05/20) Award (11 December 2013)

"291. a) There is no conflict of treaties, and even if there were, the BIT should prevail

292. The Claimants submit that there is no conflict of treaties in this case because the Accession Treaty and the EC Treaty were not in force vis-à-vis Romania at the time it entered into the BIT, or at the time when the breaches of the BIT occurred. Thus, the Claimants assert that: Everything here in this case is crystallised prior to the accession of Romania to the EU. The BIT was entered in force before, the breach predates the accession and hence the right to be compensated predates accession. [...] [T]he only element which postdates accession is the

payment: the payment of a sum of money which represents the consequences of the breach which predates accession (Tr., Day 12, 141 (Gaillard)).

293. The Claimants also note that the Commission expressly concludes that the BIT has been neither superseded nor terminated by Romania's accession to the EU pursuant to Article 59 of the Vienna Convention."

Article 60

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

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

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

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

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

(ii) As between all the parties;

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

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

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

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

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

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

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

Άρθρο 60

Τερματισμός ή αναστολή εφαρμογής της συνθήκης συνεπεία παραβιάσεώς της

1. Ουσιώδης παραβίασης διμερούς συνθήκης εκ μέρους του ενός συμβαλλόμενου μέρους παρέχει το δικαίωμα στο έτερο (συμβαλλόμενο μέρος) να επικαλεστεί την παραβίαση αυτή ως λόγο τερματισμού της συνθήκης ή αναστολής της λειτουργίας της είτε στο σύνολο της είτε εν μέρει.

2. Ουσιώδης παραβίαση πολυμερούς συμφωνίας εκ μέρους ενός εκ των συμβαλλομένων μερών, παρέχει το δικαίωμα:

(α) στα έτερα συμβαλλόμενα μέρη ύστερα από ομόφωνη συμφωνία, να αναστείλουν τη λειτουργία της συνθήκης στο σύνολό της ή εν μέρει ή να την τερματίσουν είτε:

(i) Όσον αφορά τις σχέσεις μεταξύ των ιδίων και του παραβιάζοντος Κράτους· ή

(ii) Όσον αφορά όλα τα συμβαλλόμενα μέρη

(β) Στο συμβαλλόμενο μέρος που ειδικώς εθίγη από την παραβίαση να την επικαλεστεί ως λόγο αναστολής της εφαρμογής της συνθήκης είτε στο σύνολό της είτε εν μέρει στις σχέσεις μεταξύ του ιδίου και του παραβιάζοντος Κράτους·

(γ) Σε οποιοδήποτε εκ των συμβαλλομένων μερών εκτός από το παραβιάζον Κράτος να επικαλεστεί την παραβίαση ως λόγο αναστολής της εφαρμογής της συνθήκης είτε στο σύνολο της είτε εν μέρει όσον αφορά το ίδιο, εφόσον η συνθήκη είναι τέτοιας φύσης ώστε μία ουσιώδης παραβίαση των διατάξεων της ενός εκ των συμβαλλομένων μερών να αλλάζει ριζικά

την θέση καθενός εκ των λοιπών συμβαλλομένων μερών σε σχέση με την περαιτέρω εκτέλεση των υποχρεώσεων τους δυνάμει της συνθήκης.
3. Ουσιώδης παραβίαση της συνθήκης, για τους σκοπούς του παρόντος άρθρου, αποτελεί:
(α) Η αποκήρυξη της συνθήκης που δεν προβλέπεται από την παρούσα Σύμβαση· ή
(β) Η παραβίαση μιας διάταξης ουσιώδους για την επίτευξη του αντικειμένου ή σκοπού της συνθήκης.
4. Οι προηγούμενες παράγραφοι δεν θίγουν οποιαδήποτε διάταξη της συνθήκης που εφαρμόζεται σε περίπτωση παραβίασης.
5. Οι παράγραφοι 1 με 3 δεν εφαρμόζονται σε διατάξεις που σχετίζονται με την προστασία της ανθρώπινης προσωπικότητας που συμπεριλαμβάνονται σε συνθήκες ανθρωπιστικού χαρακτήρα, ιδίως στις διατάξεις που απαγορεύουν κάθε μορφής αντιποίνων έναντι ατόμων που προστατεύονται από τις σχετικές συνθήκες.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

INTERNATIONAL COURT OF JUSTICE

Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v Greece) Judgment [2011] ICJ Rep 644

"117. The Applicant asserts that the Respondent has failed to demonstrate that the exceptio is a general principle of international law. The Applicant also argues that Article 60 of the 1969 Vienna Convention provides a complete set of rules and procedures governing responses to material breaches under the law of treaties and that the exceptio is not recognized as justifying non performance under the law of State responsibility. The Applicant further disputes the Respondent's contention that the Applicant's obligations under Articles 5, 6 and 7 of the Interim Accord are synallagmatic with the Respondent's obligation not to object in Article 11, paragraph 1. The Applicant also takes the position that the Respondent did not raise the breaches upon which it now relies until after the Respondent objected to the Applicant's admission to NATO.

118. The Respondent maintains that any disregard of its obligations under the Interim Accord could be justified as a response to a material breach of a treaty. The Respondent initially stated that it was not seeking to suspend the Interim Accord in whole or in part pursuant to the 1969 Vienna Convention, but later took the position that partial suspension of the Interim Accord is "justified" under Article 60 of the 1969 Vienna Convention (to which both the Applicant and Respondent are parties) because the Applicant's breaches were material. The Respondent took note of the procedural requirements contained in Article 65 of the 1969 Vienna Convention, but asserted that, if a State is suspending part of a treaty "in answer to another party . . . alleging its violation", ex ante notice is not required.

119. The Applicant contends that the Respondent never alerted the Applicant to any alleged material breach of the Interim Accord and never sought to invoke a right of suspension under Article 60 of the 1969 Vienna Convention. The Applicant notes that the Respondent confirmed its non reliance on Article 60 in the Counter Memorial. In addition, the Applicant calls attention to the "specific and detailed" procedural requirements of Article 65 of the 1969 Vienna Convention and asserts that the Respondent has not met those. The Applicant further contends that prior to the Bucharest Summit, the Respondent never notified the Applicant of any ground for suspension of the Interim Accord, of its view that the Applicant had breached the Interim Accord or that the Respondent was suspending the Interim Accord. […]

123. The Court observes that while the Respondent presents separate arguments relating to the exceptio, partial suspension under Article 60 of the 1969 Vienna Convention, and countermeasures, it advances certain minimum conditions that are common to all three arguments. First, the Respondent bases each argument on the allegation that the Applicant breached several provisions of the Interim Accord prior to the Respondent's objection to the

Applicant's admission to NATO. Secondly, each argument, as framed by the Respondent, requires the Respondent to show that its objection to the Applicant's admission to NATO was made in response to the alleged breach or breaches by the Applicant, in other words, to demonstrate a connection between any breach by the Applicant and any objection by the Respondent. With these conditions in mind, the Court turns to the evidence regarding the alleged breaches by the Applicant. As previously noted (see paragraph 72), it is in principle the duty of the party that asserts certain facts to establish the existence of such facts. […]
162. As described above (see paragraph 118), the Respondent also suggested that its objection to the Applicant's admission to NATO could have been regarded as a response, within Article 60 of the 1969 Vienna Convention, to material breaches of the Interim Accord allegedly committed by the Applicant. Article 60, paragraph 3 (b), of the 1969 Vienna Convention provides that a material breach consists in "the violation of a provision essential to the accomplishment of the object or purpose of the treaty". 163. The Court recalls its analysis of the Respondent's allegations of breach at paragraphs 124 to 159 above and its conclusion that the only breach which has been established is the display of a symbol in breach of Article 7, paragraph 2, of the Interim Accord, a situation which ended in 2004. The Court considers that this incident cannot be regarded as a material breach within the meaning of Article 60 of the 1969 Vienna Convention. Moreover, the Court considers that the Respondent has failed to establish that the action which it took in 2008 in connection with the Applicant's application to NATO was a response to the breach of Article 7, paragraph 2, approximately four years earlier. Accordingly, the Court does not accept that the Respondent's action was capable of falling within Article 60 of the 1969 Vienna Convention."

Maritime delimitation in the Indian Ocean (Somalia v Kenya) (Preliminary Objections) [2017] ICJ Rep 3
"123. On 4 May 2015, Somalia's intransigence and continuing material breach of the MOU finally prompted Kenya to object to Somalia's CLCS submission. Having failed through diplomatic means, this temporary and partial suspension of the MOU was intended to persuade Somalia to comply with its obligations. Shortly afterwards, in a Note Verbale dated 30 June 2015, Kenya ended its suspension of the MOU. In a spirit of compromise, it invited the CLCS to proceed to consider Somalia's submission, but on the condition that Somalia would fully comply with the agreed dispute settlement procedure under the MOU.
124. Kenya's Note Verbale explained the basis for this temporary suspension as follows: Somalia's objection was a material breach of the Memorandum of Understanding (MOU) between Kenya and Somalia dated 7 April 2009, registered with the United Nations Secretariat on June 11, 2009, in accordance with Article 102 of the United Nations Charter. Under the terms of the MOU, the Parties are under an obligation not to object to each other's submissions to the Commission, and then to conclude an agreement on the delimitation of the maritime boundary after the Commission."

PERMANENT COURT OF ARBITRATION
Arbitration Between the Republic of Croatia and the Republic of Slovenia (Croatia v Slovenia) Case 2012-04, Partial Award, June 30, 2016
"204. The Tribunal observes that Article 60, paragraph 1 of the Vienna Convention is drafted in general terms and applies to any treaty not covered by its paragraphs 4 and 5. The provision therefore applies to arbitration agreements. However, the specific object and purpose of such agreements must be taken into account when applying Article 60, paragraph 1. […]
206. The Tribunal notes that the provisions of the Arbitration Agreement referred to by Slovenia concern the settlement of disputes relating to the interpretation and application of the Agreement. As stated in paragraph 167, those provisions empower the Tribunal to settle the

dispute between the Parties relating to the validity of the termination of the Agreement by Croatia. They do not, however, determine which action may be taken by one Party in cases where the other Party violates the Arbitration Agreement. In fact, the Arbitration Agreement contains no provision in this regard. Accordingly, and contrary to Slovenia's contention, paragraph 4 of Article 60 does not prevent the application of paragraph 1 of the same article.
207. For present purposes, the Tribunal must therefore consider whether there has been a 'material breach' of the Arbitration Agreement by Slovenia entitling Croatia to terminate the Agreement under Article 60, paragraph 1 of the Vienna Convention [...]
212. A 'material breach' within the meaning of Article 60, paragraph 1 of the Vienna Convention could consist either in the repudiation of a treaty (Article 60, paragraph 3, subparagraph (a)), or in the violation of a provision essential to the accomplishment of the object or purpose of the treaty (Article 60, paragraph 3, subparagraph (b)). In its notes verbales of 30 July 2015 and 16 March 2016, and in its letter of 31 July 2015 to the Tribunal, Croatia has contended that such a violation occurred in the present case. Slovenia denies it. It is therefore incumbent upon the Tribunal to interpret Article 60, paragraph 3, subparagraphs (a) and (b) of the Vienna Convention and to decide whether any breaches of the Arbitration Agreement attributable to Slovenia could entitle Croatia to terminate the Agreement.
213. To "repudiate" an agreement amounts to a "refus[al] to fulfil or discharge" it. 176 A repudiation of a treaty, as contemplated under Article 60, paragraph 3, subparagraph (a) of the Vienna Convention, involves the rejection of a treaty as a whole by the defaulting party.177 In the Tribunal's view, the right of a party to seek the termination of a treaty on the ground that the other party has repudiated it is closely related to the principle inadimplenti non est adimplendum. To safeguard expectations of reciprocity underlying a treaty relationship, a party should not be required to perform a treaty that the other party has clearly and definitively rejected. […]
214. […] A repudiation of the Agreement as a whole must be distinguished from a purported breach of any of its provisions, which may constitute a material breach under Article 60, paragraph 3, subparagraph (b) of the Vienna Convention…
215. Turning, then, to Article 60, paragraph 3, subparagraph (b) of the Vienna Convention, the Tribunal first observes that Article 60, paragraph 3, subparagraph (b) does not refer to the intensity or the gravity of the breach, but instead requires that the provision breached be essential for the accomplishment of the treaty's object and purpose. […]
218. It results from the text itself of Article 60, paragraph 3, subparagraph (b) and from the jurisprudence thus recalled that a tribunal having to apply that provision must first determine the object and purpose of the treaty which has been breached. Termination of a treaty due to such a breach under Article 60, paragraph 1 is warranted only if the breach defeats the object and purpose of the treaty. […]
225. Accordingly, and in view of the remedial action taken, the Tribunal determines that the breaches of the Arbitration Agreement by Slovenia do not render the continuation of the proceedings impossible and, therefore, do not defeat the object and purpose of the Agreement. Accordingly, Croatia was not entitled to terminate the Agreement under Article 60, paragraph 1 of the Vienna Convention. The Arbitration Agreement remains in force."

COURT OF JUSTICE OF THE EUROPEAN UNION

Opinion 2/15 of the Court *Free Trade Agreement between the European Union and the Republic of Singapore* [2017] (Full Court)

"161. Finally, the link which the provisions of Chapter 13 of the envisaged agreement display with trade between the European Union and the Republic of Singapore is also specific in nature because a breach of the provisions concerning social protection of workers and environmental protection, set out in that chapter, authorises the other Party — in accordance with the rule of

customary international law codified in Article 60(1) of the Convention on the law of treaties, signed in Vienna on 23 May 1969 (United Nations Treaty Series, vol. 1155, p. 331; 'the Vienna Convention'), which applies in relations between the European Union and third States (see, in respect of the applicability of the customary rules codified in the Vienna Convention to the external relations of the European Union, judgments of 25 February 2010, Brita, C386/08, EU:C:2010:91, paragraphs 41 and 42, and of 21 December 2016, Council v Front Polisario, C104/16 P, EU:C:2016:973, paragraphs 100, 107, 110 and 113) — to terminate or suspend the liberalisation, provided for in the other provisions of the envisaged agreement, of that trade."

Article 61

Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Άρθρο 61

Επιγενόμενη Αδυναμία Εκτέλεσης

1. Ένα συμβαλλόμενο μέρος δύναται να επικαλεστεί αδυναμία εκτέλεσης της συνθήκης ως λόγο τερματισμού ή αποχώρησης από αυτή εάν η αδυναμία προέρχεται από μόνιμη εξαφάνιση ή καταστροφή ενός αντικειμένου απαραίτητου για την εκτέλεση της συνθήκης. Εάν η αδυναμία είναι προσωρινή, δύναται να προβληθεί μόνο ως λόγος αναστολής της εφαρμογής της συνθήκης.
2. Η αδυναμία εκτέλεσης δεν δύναται να προβληθεί από ένα συμβαλλόμενο μέρος ως λόγος τερματισμού, αποχώρησης ή αναστολής της εφαρμογής μιας συνθήκης εάν η αδυναμία απορρέει από την παραβίαση του ιδίου του συμβαλλόμενου μέρους είτε μίας υποχρέωσης υπό την συνθήκη είτε οποιασδήποτε άλλης διεθνούς υποχρέωσης που οφείλεται σε οποιοδήποτε άλλο συμβαλλόμενο μέρος της συνθήκης.

Article 62

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for 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 extent of obligations still to be performed under the treaty.

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

(a) If the treaty establishes a boundary; or

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

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

Άρθρο 62

Θεμελιώδης μεταβολή των περιστάσεων

1. Θεμελιώδης μεταβολή των περιστάσεων η οποία επήλθε σε σχέση με τις υπάρχουσες κατά τον χρόνο σύναψης της συνθήκης, και η οποία δεν είχε προβλεφθεί από τα συμβαλλόμενα μέρη, δεν δύναται να προβληθεί ως λόγο τερματισμού ή αποχώρησης από την συνθήκη εκτός εάν:

(α) Η ύπαρξη αυτών των περιστάσεων αποτελούσε την ουσιώδη βάση της συναίνεσης των συμβαλλομένων μερών προς δέσμευση από την συνθήκη· και

(β) Το αποτέλεσμα της μεταβολής είναι η ριζική μεταβολή της έκτασης των υποχρεώσεων που απομένουν να εκπληρωθούν υπό την συνθήκη.

2. Η θεμελιώδης μεταβολή των συνθηκών δεν δύνανται να προβληθεί ως λόγος τερματισμού ή αποχώρησης από την συνθήκη:

(α) Εάν η συνθήκη καθορίζει σύνορα· ή

(β) Εάν η θεμελιώδης μεταβολή απορρέει από μία παραβίαση του συμβαλλόμενου μέρους που την επικαλείται είτε μιας υποχρέωσης υπό την συνθήκη είτε μιας οποιασδήποτε άλλης διεθνούς υποχρέωσης που οφείλεται σε οποιοδήποτε άλλο συμβαλλόμενο μέρος της συνθήκης.

3. Εάν, σύμφωνα με τις προηγούμενες παραγράφους, ένα συμβαλλόμενο μέρος δύναται να επικαλεστεί την θεμελιώδη μεταβολή των περιστάσεων ως λόγο τερματισμού ή αποχώρησης από μία συνθήκη, δύναται επίσης να προβάλει ως λόγο αναστολής της λειτουργίας της συνθήκης.

INTERNATIONAL DECISIONS OF COURTS, TRIBUNALS AND OTHER BODIES

PERMANENT COURT OF ARBITRATION

Arbitration Pursuant to The Agreement For The Promotion And Protection Of Investments (Government Of The United Kingdom Of Great Britain And Northern Ireland v The Plurinational State Of Bolivia) Case No 2013-15, Award of the Arbitral Tribunal, August 30, 2018

“614. Finally, commentary number 14 notes that State practice and judicial decisions support the view that necessity may constitute a circumstance precluding wrongfulness under certain very limited conditions. The cases show that necessity has been invoked to preclude the wrongfulness of acts contrary to a broad range of obligations, whether customary or conventional in origin.

In particular, to emphasize the exceptional nature of necessity and concerns about its possible abuse, article 25 is cast in negative language (‘Necessity may not be invoked ... unless’). In this respect it mirrors the language of article 62 of the 1969 Vienna Convention dealing with fundamental change of circumstances. It also mirrors that language in establishing, in paragraph 1, two conditions without which necessity may not be invoked and excluding, in paragraph 2, two situations entirely from the scope of the excuse of necessity.”

Article 63

Severance of diplomatic or consular relations

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

Άρθρο 63

Διακοπή διπλωματικών ή προξενικών σχέσεων

Η διακοπή των διπλωματικών ή προξενικών σχέσεων μεταξύ των συμβαλλομένων σε μια συνθήκη μερών δεν θίγει τις νομικές σχέσεις που έχουν καθιερωθεί μεταξύ τους δυνάμει της συνθήκης, εκτός αν, και στο βαθμό που, η ύπαρξη των διπλωματικών ή προξενικών σχέσεων είναι απαραίτητη για την εφαρμογή της συνθήκης.

Article 64

Emergence of a new peremptory norm of general international law ("jus cogens")

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

Άρθρο 64

Εμφάνιση νέου αναγκαστικού κανόνα γενικού

διεθνούς δικαίου (jus cogens)

Εάν προκύψει ένας νέος αναγκαστικός κανόνας γενικού διεθνούς δικαίου, κάθε υφιστάμενη συνθήκη η οποία έρχεται σε σύγκρουση με αυτόν τον κανόνα, καθίσταται άκυρη και τερματίζεται.

SECTION 4
PROCEDURE

ΤΜΗΜΑ 4

ΔΙΑΔΙΚΑΣΙΑ

Article 65
Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.
2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.
3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.
4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.
5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Άρθρο 65

Διαδικασία εφαρμοστέα σε περίπτωση ακυρότητας, τερματισμού, αποχώρησης ή αναστολής της συνθήκης

1. Κάθε συμβαλλόμενο μέρος το οποίο, σύμφωνα με τις διατάξεις της παρούσας Σύμβασης, επικαλείται είτε ελάττωμα στη συναίνεση του προς δέσμευση από μια συνθήκη, είτε λόγο για την καταγγελία του κύρους αυτής, για τον τερματισμό της, για την αποχώρηση από αυτήν ή την αναστολή της λειτουργίας της, πρέπει να γνωστοποιήσει στα λοιπά συμβαλλόμενα μέρη τον ισχυρισμό του. Η γνωστοποίηση αυτή, υποδεικνύει το προτεινόμενο μέτρο σε σχέση με τη συνθήκη και τους λόγους για τους οποίους πρέπει να ληφθεί.
2. Εάν, μετά τη λήξη μιας χρονικής περιόδου η οποία, με εξαίρεση τις περιπτώσεις ιδιαίτερα επείγουσας ανάγκης, δεν θα πρέπει να είναι μικρότερη των τριών μηνών από τη λήψη της γνωστοποίησης, κανένα συμβαλλόμενο μέρος δεν έχει προβάλει κάποια αντίρρηση, το συμβαλλόμενο μέρος που πραγματοποιεί τη γνωστοποίηση, μπορεί να εκτελέσει, με τον τρόπο που προβλέπεται στο άρθρο 67, το μέτρο που το ίδιο έχει προτείνει.

3. Αν, ωστόσο έχει προβληθεί αντίρρηση από οποιοδήποτε άλλο συμβαλλόμενο μέρος, τα συμβαλλόμενα μέρη πρέπει να αναζητήσουν μια λύση με τα προβλεπόμενα μέσα που υποδεικνύονται στο άρθρο 33 του Χάρτη των Ηνωμένων Εθνών.
4. Τίποτα (από τα προβλεπόμενα) στις προηγηθείσες παραγράφους δεν θίγει τα δικαιώματα ή τις υποχρεώσεις των συμβαλλομένων μερών που απορρέουν από κάθε ισχύουσα διάταξη η οποία δεσμεύει τα μέρη όσον αφορά την επίλυση των διαφορών.
5. Με την επιφύλαξη του άρθρου 45, το γεγονός ότι ένα Κράτος δεν έχει προηγουμένως προβεί στη γνωστοποίηση που προβλέπεται στην παράγραφο 1, δεν πρέπει να το εμποδίζει από το να προβεί στη γνωστοποίηση αυτή, ως απάντηση σε ένα άλλο συμβαλλόμενο μέρος που αιτείται την εκτέλεση της συνθήκης ή ισχυρίζεται την παραβίασή αυτής.

INTERNATIONAL DECISIONS OF COURTS, TRIBUNALS AND OTHER BODIES

PERMANENT COURT OF ARBITRATION

Arbitration Between the Republic of Croatia and the Republic of Slovenia (Croatia v Slovenia) Case 2012-04, Partial Award, June 30, 2016

"204. However, in paragraph 4, Article 65 adds that "[n]othing 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". The article therefore explicitly recognises and preserves a tribunal's ability, pursuant to its own mandate, to resolve disputes falling within its jurisdiction.
206. The Tribunal has already stated that it has jurisdiction under the Arbitration Agreement to settle the dispute between the Parties concerning the validity of the termination of the Agreement by Croatia (see paragraph 162 above). That jurisdiction is not affected by Article 65 of the Vienna Convention, which on the contrary preserves it in paragraph 4.
207. The Tribunal therefore has jurisdiction under the provisions of the Arbitration Agreement and Article 21, paragraph 1 of the PCA Optional Rules, and in conformity with Article 65 of the Vienna Convention, to decide whether Croatia, acting under Article 60 of the Convention, has validly proposed to Slovenia to terminate the Arbitration Agreement and has validly ceased to apply it.
212. There is no doubt that the Tribunal also has inherent jurisdiction to decide whether the "arbitration process as a whole has been compromised to such an extent that . . . the arbitration process cannot continue"."
213. Croatia entered the European Union and the arbitral process started. It would have to be stopped if the breaches of the Arbitration Agreement by Slovenia entitled Croatia unilaterally to terminate the Agreement in accordance with Article 65 of the Vienna Convention."

WORLD TRADE ORGANIZATION

Korea – Government Procurement – Report of the Panel (6 November 2000) WT/DS163/R

"7.16. Article 65 on the specific procedure for invoking invalidity of a treaty does not seem to belong to the provisions of the Vienna Convention which have become customary international law."

Article 66

Procedures for judicial settlement, arbitration and conciliation

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

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

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

Άρθρο 66

Διαδικασίες δικαστικού διακανονισμού, διαιτησίας και συνδιαλλαγής

Εάν, σύμφωνα με την παράγραφο 3 του άρθρου 65, δεν έχει επιτευχθεί καμία λύση μέσα σε μια χρονική περίοδο δώδεκα μηνών από την ημερομηνία κατά την οποία προβλήθηκε η αντίρρηση, εφαρμόζονται οι ακόλουθες διαδικασίες:

(α) Οποιοδήποτε εκ των συμβαλλομένων μερών στη διαφορά, η οποία αφορά την εφαρμογή ή την ερμηνεία των άρθρων 53 ή 64, δύναται να την υποβάλλει ενώπιον του Διεθνούς Δικαστηρίου της Χάγης, μέσω γραπτής προσφυγής, για την έκδοση απόφασης, εκτός αν τα συμβαλλόμενα μέρη κοινή συναινέσει συμφωνήσουν να την υποβάλουν σε διαιτησία,

(β) Οποιοδήποτε εκ των συμβαλλομένων μερών στη διαφορά, η οποία αφορά την εφαρμογή ή την ερμηνεία οποιασδήποτε εκ των κοινών διατάξεων του Μέρους V της παρούσας Σύμβασης μπορεί να κινήσει τη διαδικασία που εξειδικεύεται στο Παράρτημα της Σύμβασης, υποβάλλοντας αίτημα για το σκοπό αυτό στο Γενικό Γραμματέα των Ηνωμένων Εθνών.

Article 67

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

1. The notification provided for under article 65, paragraph 1, must be made in writing.
2. Any act of declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Άρθρο 67

Έγγραφα με τα οποία κηρύσσεται η ακυρότητα, ο τερματισμός, η αποχώρηση ή η αναστολή εφαρμογής συνθήκης

1. Η γνωστοποίηση που προβλέπεται της παραγράφου 1 του άρθρου 65, πρέπει να διατυπώνεται γραπτώς.
2. Οποιαδήποτε πράξη η οποία κηρύσσει ακυρότητα, τερματισμό, αποχώρηση ή αναστολή της λειτουργίας μιας συνθήκης, σύμφωνα με τις διατάξεις της συνθήκης ή με τις παραγράφους 2 και 3 του άρθρου 65, διεξάγεται μέσω εγγράφου κοινοποιούμενου στα υπόλοιπα συμβαλλόμενα μέρη. Εάν το έγγραφο αυτό δεν είναι υπογεγραμμένο από τον Αρχηγό του Κράτους, τον Πρωθυπουργό ή των Υπουργό Εξωτερικών, ο αντιπρόσωπος του Κράτους που κοινοποιεί το έγγραφο μπορεί να κληθεί να επιδείξει το πληρεξούσιο έγγραφο.

Article 68

Revocation of notifications and instruments provided for in articles 65 and 67

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

Άρθρο 68

Ανάκληση γνωστοποιήσεων και εγγράφων αναφερομένων στα άρθρα 65 και 67

Γνωστοποίηση ή έγγραφο που προβλέπεται στα άρθρα 65 και 67 μπορεί να ανακληθεί ανά πάσα στιγμή, πριν να παραγάγει αποτελέσματα.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Case C-621/18 *Andy Wightman and Others v Secretary of State* [2018] Judgment (Full Court)

"10. It follows from the foregoing that the notification by a Member State of its intention to withdraw does not lead inevitably to the withdrawal of that Member State from the European Union. On the contrary, a Member State that has reversed its decision to withdraw from the European Union is entitled to revoke that notification for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that provision, has not expired.

11. That conclusion is corroborated by the provisions of the Vienna Convention on the Law of Treaties, which was taken into account in the preparatory work for the Treaty establishing a Constitution for Europe.

12. In the event that a treaty authorizes withdrawal under its provisions, Article 68 of that convention specifies inter alia, in clear and unconditional terms, that a notification of withdrawal, as provided for in Article 65 or 67 thereof, 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

ΤΜΗΜΑ 5

ΣΥΝΕΠΕΙΕΣ ΤΗΣ ΑΚΥΡΩΣΕΩΣ, ΤΕΡΜΑΤΙΣΜΟΥ Η ΑΝΑΣΤΟΛΗΣ ΕΦΑΡΜΟΓΗΣ ΤΗΣ ΣΥΝΘΗΚΗΣ

Article 69

Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty: (a) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed; (b) Acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.
3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty,

Άρθρο 69

Συνέπειες ακυρώσεως συνθήκης

1. Η συνθήκη της οποίας η ακυρότητα διαπιστώνεται βάσει της παρούσας Σύμβασης είναι άκυρη. Οι διατάξεις άκυρης συνθήκης δεν έχουν νομική ισχύ.
2. Στην περίπτωση που έχουν λάβει χώρα πράξεις σε εφαρμογή μιας τέτοιας συνθήκης:
(α) Κάθε συμβαλλόμενο μέρος μπορεί να ζητήσει από οποιοδήποτε άλλο μέρος να καθορίσει, στο μέτρο του δυνατού, στις αμοιβαίες σχέσεις τους, την κατάσταση η οποία θα υφίστατο αν δεν είχαν συντελεσθεί οι ως άνω πράξεις·
(β) Οι πράξεις που διεπράχθησαν καλόπιστα πριν την επίκληση της ακυρότητας δεν καθίστανται παράνομες μόνο εκ του λόγου της ακυρότητας της συνθήκης.
3. Στις περιπτώσεις των άρθρων 49, 50, 51, και 52, η παράγραφος 2 δεν εφαρμόζεται ως προς το συμβαλλόμενο μέρος στο οποίο καταλογίζεται η απάτη, η πράξη δωροδοκίας ή ο εξαναγκασμός.
4. Στην περίπτωση ακυρότητας της συναίνεσης Κράτους προς δέσμευση από μία πολυμερή συνθήκη, οι ανωτέρω κανόνες εφαρμόζονται στις σχέσεις μεταξύ του Κράτους αυτού και των συμβαλλομένων στη συνθήκη μερών.

Article 70

Consequences of the termination of a treaty

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

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

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

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

Άρθρο 70

Συνέπειες τερματισμού συνθήκης

1. Εκτός εάν η συνθήκη άλλως ορίζει ή τα συμβαλλόμενα μέρη έχουν συμφωνήσει διαφορετικά, ο τερματισμός μιας συνθήκης κατά τις διατάξεις της ή σύμφωνα με τη παρούσα Σύμβαση:

(α) Απαλλάσσει τα συμβαλλόμενα μέρη από κάθε περαιτέρω υποχρέωση εφαρμογής της συνθήκης·

(β) Δεν θίγει οποιοδήποτε δικαίωμα, υποχρέωση ή νομική κατάσταση των συμβαλλομένων μερών που έχει δημιουργηθεί από την εκτέλεση της συνθήκης προ του τερματισμού της.

2. Εάν ένα Κράτος καταγγείλει ή αποχωρήσει από πολυμερή συνθήκη, η παράγραφος 1 εφαρμόζεται στις σχέσεις μεταξύ του Κράτους αυτού και καθενός εκ των λοιπών συμβαλλομένων μερών της συνθήκης από την ημερομηνία κατά την οποία η καταγγελία ή αποχώρηση παράξει έννομα αποτελέσματα.

Article 71

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

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

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

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

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

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

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

Άρθρο 71

Συνέπειες της ακυρότητας συνθήκης η οποία συγκρούεται με αναγκαστικό κανόνα του γενικού διεθνούς δικαίου

Σε περίπτωση άκυρης συνθήκης κατά το άρθρο 53 τα συμβαλλόμενα μέρη υποχρεούνται:

(α) Να εξαλείψουν, στο μέτρο του δυνατού, τις συνέπειες κάθε πράξης που έλαβε χώρα βάσει κάποιας διάταξης η οποία έρχεται σε σύγκρουση με αναγκαστικό κανόνα του γενικού διεθνούς δικαίου· και

(β) Να εναρμονίσουν τις αμοιβαίες τους σχέσεις προς τον αναγκαστικό κανόνα του γενικού διεθνούς δικαίου.

Σε περίπτωση κατά την οποία συνθήκη καθίσταται άκυρη και τερματίζεται βάσει του άρθρου 64, ο τερματισμός της συνθήκης:

(α) Απαλλάσσει τα συμβαλλόμενα μέρη από κάθε περαιτέρω υποχρέωση εφαρμογής της συνθήκης·

(β) Δεν θίγει οποιοδήποτε δικαίωμα, υποχρέωση ή νομική κατάσταση των συμβαλλομένων μερών που έχει δημιουργηθεί από την εκτέλεση της συνθήκης προ του τερματισμού της, με την προϋπόθεση ότι η διατήρηση των ως άνω δικαιωμάτων, υποχρεώσεων ή καταστάσεων δεν έρχεται σε σύγκρουση προς το νέο αναγκαστικό κανόνα του γενικού διεθνούς δικαίου.

Article 72

Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:
(a) Releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
(b) Does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

Άρθρο 72

Συνέπειες αναστολής εφαρμογής της συνθήκης

Εκτός εάν η συνθήκη άλλως ορίζει ή τα συμβαλλόμενα μέρη έχουν συμφωνήσει διαφορετικά, η αναστολή της εφαρμογής μίας συνθήκης κατά τις διατάξεις της ή σύμφωνα με τη παρούσα Σύμβαση:
(α) Απαλλάσσει τα συμβαλλόμενα μέρη, μεταξύ των οποίων η εφαρμογή της συνθήκης αναστέλλεται, από την υποχρέωση εκτέλεσης της συνθήκης στις αμοιβαίες σχέσεις τους κατά τη διάρκεια της αναστολής·
(β) Δεν θίγει κατ' άλλον τρόπο τις νομικές σχέσεις μεταξύ των συμβαλλομένων μερών όπως έχουν καθοριστεί εκ της συνθήκης.
Κατά τη διάρκεια της αναστολής τα συμβαλλόμενα στη συνθήκη μέρη απέχουν από κάθε ενέργεια η οποία παρεμποδίζει την θέση εκ νέου σε ισχύ της συνθήκης.

PART VI

MISCELLANEOUS PROVISIONS

ΜΕΡΟΣ VI

ΕΙΔΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Article 73

Cases Of State Succession, State Responsibility And Outbreak Of Hostilities

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

Άρθρο 73

Περιπτώσεις διαδοχής κράτους, ευθύνης κράτους και ενάρξεως εχθροπραξιών

Οι διατάξεις της παρούσας σύμβασης δεν θίγουν κανένα ζήτημα το οποίο μπορεί να προκύψει σε σχέση με μια συνθήκη από τη διαδοχή Κρατών ή από τη διεθνή ευθύνη ενός Κράτους ή από την εμφάνιση εχθροπραξιών μεταξύ Κρατών.

Article 74

Diplomatic and consular relations and the conclusion of treaties

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

Άρθρο 74

Διπλωματικές και προξενικές σχέσεις και η σύναψη των συνθηκών

Η διακοπή ή ανυπαρξία διπλωματικών ή προξενικών σχέσεων μεταξύ δύο ή περισσοτέρων Κρατών δεν εμποδίζει τη σύναψη συνθηκών μεταξύ των Κρατών αυτών. Μόνη η σύναψη μίας συνθήκης δεν επηρεάζει την κατάσταση σχετικά με τις διπλωματικές ή προξενικές σχέσεις.

Article 75

Case of an aggressor state

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

Άρθρο 75

Περίπτωση επιτιθέμενου κράτους

Οι διατάξεις της παρούσας Σύμβασης δεν θίγουν τις συμβατικές υποχρεώσεις που μπορεί να προκύψουν για ένα επιτιθέμενο Κράτος συνεπεία μέτρων που λαμβάνονται σε σχέση με την επιθετική ενέργεια του Κράτους αυτού, σύμφωνα με το Χάρτη των Ηνωμένων Εθνών.

PART VII

DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

ΜΕΡΟΣ VII

ΘΕΜΑΤΟΦΥΛΑΚΕΣ, ΚΟΙΝΟΠΟΙΗΣΕΙΣ, ΔΙΟΡΘΩΣΕΙΣ

ΚΑΙ ΠΡΩΤΟΚΟΛΛΗΣΗ

Article 76

Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.
2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Άρθρο 76

Θεματοφύλακες συνθηκών

1. Ο καθορισμός του θεματοφύλακα μίας συνθήκης δύναται να γίνει από τα διαπραγματευόμενα Κράτη, είτε στην ίδια τη συνθήκη, είτε με άλλο τρόπο. Ο θεματοφύλακας μπορεί να είναι ένα ή περισσότερα Κράτη, ένας διεθνής οργανισμός ή ο ανώτερος διοικητικός υπάλληλος του οργανισμού.
2. Οι αρμοδιότητες του θεματοφύλακα μίας συνθήκης έχουν διεθνή χαρακτήρα και ο θεματοφύλακας έχει την υποχρέωση να τις εκτελεί αμερόληπτα. Ειδικότερα, το γεγονός ότι μια συνθήκη δεν έχει τεθεί σε ισχύ μεταξύ ορισμένων μερών ή ότι έχει προκύψει διαφορά μεταξύ Κράτους και του θεματοφύλακα αναφορικά με την εκπλήρωση των αρμοδιοτήτων του, δεν θίγει την υποχρέωση αυτή.

Article 77

Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:
(a) Keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
(b) Preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
(c) Receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
(d) Examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
(e) Informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
(f) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
(g) Registering the treaty with the Secretariat of the United Nations;
(h) Performing the functions specified in other provisions of the present Convention.
2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Άρθρο 77

Αρμοδιότητες θεματοφυλάκων

Οι αρμοδιότητες ενός θεματοφύλακα, εκτός εάν προβλέπεται διαφορετικά στη συνθήκη ή διαφορετικά συμφωνείται από τα συμβαλλόμενα Κράτη, περιλαμβάνουν ειδικότερα:
(α) Τη φύλαξη του πρωτότυπου κειμένου της συνθήκης και των πληρεξουσίων εγγράφων που επιδόθηκαν στον θεματοφύλακα·
(β) Την προετοιμασία επικυρωμένων αντιγράφων του πρωτότυπου κειμένου και προετοιμασία οποιουδήποτε περαιτέρω κειμένου της συνθήκης σε άλλες πρόσθετες γλώσσες που μπορεί να απαιτεί η συνθήκη και διαβίβασή τους στα μέρη και στα Κράτη που δικαιούνται να γίνουν συμβαλλόμενα μέρη της συνθήκης·
(γ) Τη λήψη οποιωνδήποτε υπογραφών στη συνθήκη και λήψη και φύλαξη όλων των εγγράφων, γνωστοποιήσεων και κοινοποιήσεων που σχετίζονται με αυτή·
(δ) Την εξέταση του κατά πόσον η υπογραφή ή οποιοδήποτε έγγραφο, γνωστοποίηση ή κοινοποίηση σχετικά με τη συνθήκη είναι σε ορθή και κατάλληλη μορφή και, εφόσον απαιτείται, γνωστοποίηση του εν λόγω ζητήματος στο ενδιαφερόμενο Κράτος·
(ε) Την ενημέρωση των συμβαλλομένων μερών και των Κρατών που δικαιούνται να καταστούν συμβαλλόμενα μέρη των πράξεων της συνθήκης, των γνωστοποιήσεων και των κοινοποιήσεων σχετικά με αυτήν·

(στ) Την ενημέρωση των Κρατών που δικαιούνται να καταστούν συμβαλλόμενα μέρη στη συνθήκη, όταν ο αριθμός των υπογραφών ή των οργάνων επικύρωσης, αποδοχής, έγκρισης ή προσχώρησης που απαιτείται για την θέση της συνθήκης σε ισχύ, έχει παραληφθεί ή κατατεθεί·
(ζ) Την πρωτοκόλληση της συνθήκης στη Γραμματεία των Ηνωμένων Εθνών·
(η) Την εκτέλεση των αρμοδιοτήτων που ορίζονται σε άλλες διατάξεις της παρούσας Σύμβασης.
Σε περίπτωση προκύπτουσας διαφοράς μεταξύ Κράτους και θεματοφύλακα ως προς την εκτέλεση των αρμοδιοτήτων του τελευταίου, ο θεματοφύλακας θέτει το ζήτημα υπόψη των υπογραφόντων τη συνθήκη Κρατών και των συμβαλλομένων Κρατών ή, εφόσον απαιτείται, υπόψη του αρμόδιου οργάνου του ενδιαφερόμενου διεθνούς οργανισμού.

Article 78

Notifications and communications

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

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

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

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

Άρθρο 78

Γνωστοποιήσεις και κοινοποιήσεις

Εκτός εάν η συνθήκη ή η παρούσα Σύμβαση άλλως ορίζει, κάθε κοινοποίηση ή γνωστοποίηση που υποβάλει οποιοδήποτε Κράτος στο πλαίσιο της παρούσας Σύμβασης:

(α) Ελλείψει θεματοφύλακα, διαβιβάζεται απευθείας στα Κράτη προς τα οποία απευθύνεται, και εάν υπάρχει θεματοφύλακας, στον τελευταίο·

(β) Θεωρείται ως γενομένη από το εν λόγω Κράτος μόνον εφόσον παραληφθεί από το Κράτος στο οποίο διαβιβάσθηκε, ή ανάλογα με την περίπτωση, εφόσον παραληφθεί από τον θεματοφύλακα·

(γ) Εάν διαβιβαστεί σε θεματοφύλακα, θεωρείται ότι παραλήφθηκε από το Κράτος για το οποίο προοριζόταν μόνο όταν το τελευταίο αυτό Κράτος έχει ενημερωθεί από τον θεματοφύλακα, σύμφωνα με το άρθρο 77 παράγραφος 1 (ε).

Article 79

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:
(à) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
(b) By executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or
(c) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.
2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:
(a) No objection has been raised, the depositary shall make and initial the correction in the text and shall execute a proc s-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;
(b) An objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.
3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

Άρθρο 79

Διόρθωση λαθών στα κείμενα ή σε επικυρωμένα αντίγραφα των συνθηκών

Όπου, μετά την επιβεβαίωση ως γνησίου του κειμένου της συνθήκης, τα υπογράφοντα Κράτη και τα συμβαλλόμενα Κράτη συμφωνούν ότι περιέχει σφάλμα, εκτός αν συμφωνήσουν σε άλλα μέσα διόρθωσης, το λάθος διορθώνεται:
(α) Με την πραγματοποίηση της κατάλληλης διόρθωσης στο κείμενο και την μονογραφή της διόρθωσης από δεόντως εξουσιοδοτημένους αντιπροσώπους·
(β) Με την κατάρτιση ή ανταλλαγή οργάνου ή οργάνων που ορίζουν τη διόρθωση που συμφωνήθηκε να γίνει· ή
(γ) Με την κατάρτιση ενός διορθωμένου κειμένου ολόκληρης της συνθήκης κατά την ίδια διαδικασία όπως στην περίπτωση του αρχικού κειμένου.
Όταν πρόκειται για συνθήκη για την οποία υπάρχει θεματοφύλακας, ο τελευταίος κοινοποιεί στα υπογράφοντα τη συνθήκη Κράτη και στα συμβαλλόμενα Κράτη, το σφάλμα και την πρόταση διόρθωσης, και τάσσει κατάλληλη προθεσμία εντός της οποίας μπορεί να διατυπωθεί αντίρρηση κατά της προτεινόμενης διόρθωσης. Εφόσον, κατά την εκπνοή της προθεσμίας:
(α) Δεν έχει διατυπωθεί αντίρρηση, ο θεματοφύλακας πραγματοποιεί και μονογράφει τη διόρθωση στο κείμενο, συντάσσει πρακτικό διόρθωσης του κειμένου και κοινοποιεί αντίγραφο αυτού στα συμβαλλόμενα μέρη και στα Κράτη που δικαιούνται να καταστούν συμβαλλόμενα μέρη στη συνθήκη·
(β) Έχει διατυπωθεί αντίρρηση, ο θεματοφύλακας γνωστοποιεί την αντίρρηση στα υπογράφοντα τη συνθήκη και συμβαλλόμενα μέρη.

Οι κανόνες των παραγράφων 1 και 2 εφαρμόζονται επίσης στις περιπτώσεις που το κείμενο έχει επιβεβαιωθεί ως γνήσιο σε δύο ή περισσότερες γλώσσες και φαίνεται ότι υφίσταται μεταξύ αυτών αναντιστοιχία, αναφορικά με την οποία τα υπογράφοντα τη συνθήκη Κράτη και τα συμβαλλόμενα Κράτη συμφωνούν ότι πρέπει να διορθωθεί.
Το διορθωμένο κείμενο αντικαθιστά το πλημμελώς διατυπωμένο κείμενο εξ' αρχής (ab initio), εκτός εάν τα υπογράφοντα Κράτη και τα συμβαλλόμενα Κράτη αποφασίσουν διαφορετικά.
Η διόρθωση του κειμένου συνθήκης που έχει καταχωρηθεί, κοινοποιείται στη Γραμματεία του Οργανισμού των Ηνωμένων Εθνών.
Σε περίπτωση που ανακαλύπτεται ένα λάθος σε επικυρωμένο αντίγραφο συνθήκης, ο θεματοφύλακας συντάσσει πρακτικό διόρθωσης και αποστέλλει αντίγραφο αυτού στα υπογράφοντα Κράτη και τα συμβαλλόμενα μέρη.

Article 80

Registration and Publication Of Treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.
2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

Άρθρο 80

Καταχώρηση και δημοσίευση των συνθηκών

1. Οι συνθήκες, μετά την έναρξη ισχύος τους, διαβιβάζονται στη Γραμματεία του Οργανισμού των Ηνωμένων Εθνών για καταχώριση ή αρχειοθέτηση και καταγραφή, κατά περίπτωση, και για δημοσίευση.
2. Ο καθορισμός θεματοφύλακα συνιστά εξουσιοδότηση προς αυτόν να εκτελέσει τις ενέργειες που προσδιορίζονται στην προηγούμενη παράγραφο.

PART VIII

FINAL PROVISIONS

ΜΕΡΟΣ VIII

ΤΕΛΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Article 81
Signature

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

Άρθρο 81

Υπογραφή

Η παρούσα Σύμβαση είναι ανοιχτή προς υπογραφή από όλα τα συμβαλλόμενα Κράτη – μέλη των Ηνωμένων Εθνών, τα μέλη οποιουδήποτε από τους εξειδικευμένους οργανισμούς ή του Διεθνούς Οργανισμού Ατομικής Ενέργειας ή από τα μέλη του Διεθνούς Δικαστηρίου και από οποιοδήποτε άλλο Κράτος προσκληθεί από τη Γενική Συνέλευση των Ηνωμένων Εθνών να καταστεί συμβαλλόμενο μέρος της Σύμβασης, ως ακολούθως: μέχρι την 30η Νοεμβρίου 1969, στο Ομοσπονδιακό Υπουργείο Εξωτερικών της Δημοκρατίας της Αυστρίας, και στη συνέχεια, μέχρι τις 30 Απριλίου του 1970, στην έδρα των Ηνωμένων Εθνών, στη Νέα Υόρκη.

Article 82
Ratification

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

Άρθρο 82

Επικύρωση

Η παρούσα Σύμβαση υπόκειται σε επικύρωση. Τα όργανα επικύρωσης κατατίθενται στον Γενικό Γραμματέα των Ηνωμένων Εθνών.

Article 83

Accession

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

Άρθρο 83

Προσχώρηση

Η παρούσα Σύμβαση παραμένει ανοιχτή για προσχώρηση από οποιοδήποτε Κράτος που ανήκει σε οποιαδήποτε από τις κατηγορίες που αναγράφονται στο Άρθρο 81. Τα όργανα προσχώρησης κατατίθενται στον Γενικό Γραμματέα των Ηνωμένων Εθνών.

Article 84

Entry into force

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

Άρθρο 84

Έναρξη ισχύος

1. Η παρούσα Σύμβαση τίθεται σε ισχύ την τριακοστή ημέρα μετά την ημερομηνία κατάθεσης του τριακοστού πέμπτου εγγράφου επικύρωσης ή προσχώρησης.
2. Για κάθε Κράτος που επικυρώνει ή προσχωρεί στη Σύμβαση μετά την κατάθεση του τριακοστού πέμπτου εγγράφου επικύρωσης ή προσχώρησης, η Σύμβαση τίθεται σε ισχύ την τριακοστή ημέρα μετά την κατάθεση από το Κράτος αυτό του εγγράφου επικύρωσης ή προσχώρησης.

Article 85

Authentic texts

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

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

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

Άρθρο 85

Αυθεντικά κείμενα

Το πρωτότυπο της παρούσας Σύμβασης, της οποίας τα Κινέζικα, Αγγλικά, Γαλλικά, Ρωσικά και Ισπανικά κείμενα είναι εξίσου αυθεντικά, κατατίθεται στον Γενικό Γραμματέα των Ηνωμένων Εθνών.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ οι υπογράφοντες Πληρεξούσιοι, δεόντως εξουσιοδοτημένοι προς τούτο από τις αντίστοιχες Κυβερνήσεις τους, υπέγραψαν την παρούσα Σύμβαση.

Βιέννη, εικοστή τρίτη ημέρα του Μαΐου, χίλια εννιακόσια εξήντα εννέα.

ANNEX I.

TEXT OF THE CONVENTION IN THE GREEK OFFICIAL GAZETTE

ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ
ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

ΕΝ ΑΘΗΝΑΙΣ
ΤΗι 23 ΜΑΪΟΥ 1974 | ΤΕΥΧΟΣ ΠΡΩΤΟΝ | ΑΡΙΘΜΟΣ ΦΥΛΛΟΥ
141

ΝΟΜΟΘΕΤΙΚΟΝ ΔΙΑΤΑΓΜΑ ΥΠ' ΑΡΙΘ. 402

Περὶ κυρώσεως τῆς ἀπὸ 23 Μαΐου 1969 Συμβάσεως τῆς Βιέννης περὶ τοῦ Δικαίου τῶν Συνθηκῶν καὶ τοῦ προσηρτημένου αὐτῇ παραρτήματος.

Ο ΠΡΟΕΔΡΟΣ
ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Προτάσει τοῦ Ἡμετέρου Ὑπουργικοῦ Συμβουλίου, ἀπεφασίσαμεν καὶ διατάσσομεν:

Ἄρθρον Πρῶτον

Κυροῦται καὶ κτᾶται ἰσχὺν νόμου ἡ ἐν Βιέννῃ καὶ ὑπὸ τὴν αἰγίδα τοῦ Ὀργανισμοῦ Ἡνωμένων Ἐθνῶν καταρτισθεῖσα τὴν 23ην Μαΐου 1969 Σύμβασις περὶ τοῦ Δικαίου τῶν Συνθηκῶν μετὰ τοῦ προσηρτημένου αὐτῇ παραρτήματος ὧν τὸ κείμενον ἐν πρωτοτύπῳ εἰς τὴν ἀγγλικὴν γλῶσσαν καὶ ἐν μεταφράσει εἰς τὴν ἑλληνικὴν ἔχει ὡς ἕπεται:

VIENNA CONVENTION ON THE LAW OF TREATIES

The States Parties to the present Convention.

Considering the fundamental role of treaties in the history of international relations.

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems.

Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized.

Affirming that disputes concerning treaties, like other international disputes, shoul be settled by peaceful means and in conformity with the principles of justice and international law.

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained.

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affaires of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations.

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

PART I

INTRODUCTION

Article 1

Scope of the present Convention

The present Convention applies to treaties between States.

Article 2

Use of terms

1. For the purposes of the present Convention:

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

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

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

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

(e) «negotiating State» means a State which took part in the drawing up and adoption of the text of the treaty;

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

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

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

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

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

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

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

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

ΣΥΜΒΑΣΙΣ ΤΗΣ ΒΙΕΝΝΗΣ
ΠΕΡΙ ΤΟΥ ΔΙΚΑΙΟΥ ΤΩΝ ΣΥΝΘΗΚΩΝ

Τὰ συμβαλλόμενα ἐν τῇ παρούσῃ Συμβάσει Μέρη :

Λαμβάνοντα ὑπ' ὄψιν τὸν θεμελιώδη ρόλον τῶν συνθηκῶν ἐν τῇ ἱστορίᾳ τῶν διεθνῶν σχέσεων,

Ἀναγνωρίζοντα τὴν ὁλονὲν αὐξανομένην σημασίαν τῶν συνθηκῶν ὡς πηγῆς τοῦ Διεθνοῦς Δικαίου καὶ ὡς τρόπου ἀναπτύξεως τῆς εἰρηνικῆς μεταξὺ τῶν λαῶν συνυπάρξεως ἀνεξαρτήτως τῶν συνταγματικῶν καὶ τῶν κοινωνικῶν των συστημάτων,

Σημειοῦντα, ὅτι αἱ ἀρχαὶ τῆς ἐλευθέρας συναινέσεως καὶ τῆς καλῆς πίστεως καὶ τοῦ σεβασμοῦ τῶν ὑπεσχημένων παγκοσμίως ἀναγνωρίζονται,

Βεβαιοῦντα, ὅτι διαφοραὶ ἀφορῶσαι εἰς συνθήκας, ὡς αἱ λοιπαὶ διεθνεῖς διαφοραί, θὰ ἔδει νὰ ἐπιλύωνται δι' εἰρηνικῶν μέσων καὶ συμφώνως μὲ τὰς ἀρχὰς τῆς δικαιοσύνης καὶ τοῦ Διεθνοῦς Δικαίου,

Ὑπομιμνήσκοντα ὅτι οἱ λαοὶ τῶν Ἡνωμένων Ἐθνῶν εἶναι ἀποφασισμένοι νὰ δημιουργήσουν συνθήκας δυνάμει τῶν ὁποίων ἡ δικαιοσύνη καὶ ὁ σεβασμὸς τῶν συμβατικῶν ὑποχρεώσεων θὰ δύναται νὰ διατηρηθῇ,

Ἔχοντα ὑπ' ὄψιν τὰς ἀρχὰς τοῦ Διεθνοῦς Δικαίου τὰς ἀνευρισκομένας εἰς τὸν Χάρτην τῶν Ἡνωμένων Ἐθνῶν ὡς αἱ ἀρχαὶ τῆς ἰσότητος τῶν δικαιωμάτων καὶ αὐτοδιαθέσεως τῶν λαῶν, τῆς κυριάρχου ἰσότητος καὶ ἀνεξαρτησίας ὅλων τῶν κρατῶν, τῆς μὴ ἐπεμβάσεως εἰς τὰς ἐσωτερικὰς ὑποθέσεις τῶν λαῶν, τῆς ἀπαγορεύσεως τῆς ἀπειλῆς ἢ χρήσεως βίας καὶ τοῦ οἰκουμενικοῦ σεβασμοῦ καὶ τηρήσεως δι' ὅλους τῶν ἀνθρωπίνων δικαιωμάτων καὶ θεμελιωδῶν ἐλευθεριῶν,

Πεποιθότα, ὅτι ἡ κωδικοποίησις καὶ προοδευτικὴ ἀνάπτυξις τοῦ δικαίου τῶν συνθηκῶν, ἥτις ἐπετεύχθη διὰ τῆς παρούσης συμβάσεως θὰ προαγάγῃ τοὺς σκοποὺς τῶν Ἡνωμένων Ἐθνῶν, ὡς οὗτοι περιλαμβάνονται εἰς τὸν Χάρτην συγκεκριμένως τὴν διατήρησιν τῆς διεθνοῦς εἰρήνης καὶ ἀσφαλείας, τὴν ἀνάπτυξιν φιλικῶν σχέσεων καὶ τὴν ἐπίτευξιν συνεργασίας μεταξὺ τῶν Ἐθνῶν,

Διαβεβαιοῦντα ὅτι οἱ κανόνες τοῦ ἐθιμικοῦ Διεθνοῦς Δικαίου θὰ συνεχίσουν νὰ διέπουν ζητήματα μὴ ρυθμιζόμενα ὑπὸ τῶν διατάξεων τῆς παρούσης συμβάσεως.

Συνεφώνησαν ἐπὶ τῶν ἀκολούθων :

ΜΕΡΟΣ Ι

ΕΙΣΑΓΩΓΗ

Ἄρθρον 1.

Ἐφαρμογὴ τῆς παρούσης Συμβάσεως.

Ἡ παροῦσα σύμβασις ἐφαρμόζεται ἐπὶ τῶν συνθηκῶν μεταξὺ κρατῶν.

Ἄρθρον 2.

Χρησιμοποιούμενοι ὅροι.

1. Διὰ τοὺς σκοποὺς τῆς παρούσης συμβάσεως :

(α) Διὰ τοῦ ὅρου «συνθήκη» νοεῖται διεθνὴς συμφωνία συνομολογουμένη μεταξὺ κρατῶν, εἰς ἔγγραφον τύπον καὶ διεπομένη ὑπὸ τοῦ Διεθνοῦς Δικαίου, ἀνεξαρτήτως ἐὰν περιλαμβάνεται εἰς ἕν, δύο ἢ πλείονα ἔγγραφα καὶ ἀνεξαρτήτως τῆς εἰδικῆς αὐτῆς ὀνομασίας.

(β) Διὰ τοῦ ὅρου «ἐπικύρωσις», «ἀποδοχή», «ἔγκρισις» καὶ «προσχώρησις» νοεῖται εἰς ἑκάστην περίπτωσιν ἡ οὕτω καλουμένη διεθνὴς πρᾶξις διὰ τῆς ὁποίας τὸ κράτος συναινεῖ, ἐν τῷ διεθνεῖ πεδίῳ, ὅπως δεσμευθῇ διὰ τῆς συνθήκης.

(γ) Διὰ τοῦ ὅρου «πληρεξούσιον» νοεῖται ἔγγραφον τῆς ἁρμοδίας ἀρχῆς τοῦ κράτους, καθορίζον ἕν ἢ πλείονα πρόσωπα διὰ τὴν ἀντιπροσώπευσιν τοῦ κράτους διὰ τὴν διαπραγμάτευσιν, υἱοθέτησιν ἢ βεβαίωσιν τοῦ κειμένου Συμθήκης, διὰ τὴν ἔκφρασιν τῆς συναινέσεως τοῦ κράτους ὅπως δεσμευθῇ διὰ τῆς συνθήκης ἢ διὰ τὴν τέλεσιν οἱασδήποτε ἑτέρας πράξεως, ἀναφορικῶς πρὸς αὐτήν.

(δ) Διὰ τοῦ ὅρου «ἐπιφύλαξις» νοεῖται ἡ ἀνεξαρτήτως τοῦ χρησιμοποιουμένου ὅρου μονομερὴς δήλωσις τοῦ κράτους, κατὰ τὴν ὑπογραφήν, ἐπικύρωσιν, ἀποδοχήν, ἔγκρισιν ἢ προσχώρησιν εἰς συνθήκην, διὰ τῆς ὁποίας ἐπιδιώκει ν' ἀποβάλῃ ἢ νὰ τροποποιήσῃ τὰ ἔννομα ἀποτελέσματα διατάξεων τινῶν τῆς συνθήκης, κατὰ τὴν ἐφαρμογήν των ἔναντι τοῦ κράτους τούτου.

(ε) Διὰ τοῦ ὅρου «διαπραγματευόμενον κράτος» νοεῖται τὸ κράτος, τὸ ὁποῖον συμμετέσχεν εἰς τὴν σύνταξιν καὶ υἱοθέτησιν τοῦ κειμένου τῆς συνθήκης.

(στ) Διὰ τοῦ ὅρου «συμβαλλόμενον κράτος» νοεῖται τὸ κράτος τὸ ὁποῖον συνήνεσε νὰ δεσμευθῇ διὰ τῆς συνθήκης ἀνεξαρτήτως ἐὰν ἡ συνθήκη ἐτέθη ἐν ἰσχύι ἢ ὄχι.

(ζ) Διὰ τοῦ ὅρου «μέρος», νοεῖται τὸ κράτος τὸ ὁποῖον συνήνεσε νὰ δεσμευθῇ διὰ τῆς συνθήκης καὶ διὰ τὸ ὁποῖον ἡ Συνθήκη εἶναι ἐν ἰσχύι.

(η) Διὰ τοῦ ὅρου «τρίτον κράτος» νοεῖται τὸ κράτος τὸ ὁποῖον δὲν τυγχάνει μέρος εἰς τὴν συνθήκην.

(θ) Διὰ τοῦ ὅρου «διεθνὴς ὀργανισμὸς» νοεῖται ὁ διακυβερνητικὸς ὀργανισμός.

2. Αἱ διατάξεις τῆς παραγράφου 1 ὡς πρὸς τὴν χρῆσιν τῶν ὅρων ἐν τῇ παρούσῃ συμβάσει δὲν θίγουν τὴν χρῆσιν τῶν ὡς ἄνω ὅρων ἢ τὴν ἔννοιαν ἣν ἐνδεχομένως προσλαμβάνουν εἰς τὸ ἐσωτερικὸν δίκαιον τοῦ κράτους.

Ἄρθρον 3.

Διεθνεῖς Συμφωνίαι μὴ ἐμπίπτουσαι εἰς τὰ πλαίσια τῆς παρούσης Συμβάσεως.

Τὸ γεγονὸς ὅτι, ἡ παροῦσα σύμβασις δὲν ἐφαρμόζεται ἐπὶ διεθνῶν συμφωνιῶν μεταξὺ κρατῶν καὶ ἄλλων ὑποκειμένων τοῦ Διεθνοῦς Δικαίου ἢ μεταξὺ τῶν ὡς ἄνω ἑτέρων ὑποκειμένων τοῦ Διεθνοῦς Δικαίου, ἢ ἐπὶ διεθνῶν συμφωνιῶν, συνομολογηθεισῶν εἰς ἄγραφον τύπον, δὲν ἐπηρεάζει :

(α) τὴν νομικὴν ἰσχὺν τῶν τοιούτων συμφωνιῶν.

(β) τὴν ἐφαρμογὴν ἐπ' αὐτῶν οἱουδήποτε τῶν κανόνων τῶν θεσπιζομένων ἐν τῇ παρούσῃ συμβάσει, εἰς τοὺς ὁποίους θὰ ὑπήγοντο, κατὰ τὸ Διεθνὲς Δίκαιον, ἀνεξαρτήτως τῆς ἐν λόγῳ Συμβάσεως.

(γ) τὴν ἐφαρμογὴν τῆς συμβάσεως εἰς τὰς μεταξὺ τῶν κρατῶν σχέσεις, τὰς διεπομένας ὑπὸ διεθνῶν συμφωνιῶν εἰς τὰς ὁποίας τυγχάνουν ἐξ ἴσου μέρη ἕτερα ὑποκείμενα τοῦ Διεθνοῦς Δικαίου.

Ἄρθρον 4.

Μὴ ἀναδρομικότης τῆς παρούσης Συμβάσεως.

Διαφυλασσομένης τῆς ἐφαρμογῆς οἱωνδήποτε κανόνων περιλαμβανομένων ἐν τῇ παρούσῃ συμβάσει, εἰς τοὺς ὁποίους θὰ ὑπήγοντο αἱ συνθῆκαι κατ' ἐφαρμογὴν τοῦ Διεθνοῦς Δικαίου ἀσχέτως τῆς συμβάσεως ταύτης, αὕτη ἐφαρμόζεται μόνον ἐπὶ συνθηκῶν, αἵτινες συνωμολογήθησαν ὑπὸ τῶν κρατῶν μετὰ τὴν θέσιν ἐν ἰσχύι τῆς παρούσης συμβάσεως ἔναντι τούτων.

Ἄρθρον 5.

Συνθῆκαι ἱδρυτικαὶ Διεθνῶν Ὀργανισμῶν καὶ Συνθῆκαι υἱοθετηθεῖσαι ὑπὸ τούτων.

Ἡ παροῦσα σύμβασις ἐφαρμόζεται ἐπὶ πάσης συνθήκης ἱδρυτικῆς Διεθνοῦς Ὀργανισμοῦ καὶ ἐπὶ πάσης τοιαύτης υἱοθετηθείσης ὑπ' αὐτοῦ, ἐπιφυλασσομένων τῶν σχετικῶν κανόνων τοῦ Ὀργανισμοῦ.

ΜΕΡΟΣ ΙΙ

ΣΥΝΟΜΟΛΟΓΗΣΙΣ ΚΑΙ ΘΕΣΙΣ ΕΝ ΙΣΧΥΙ ΤΩΝ ΣΥΝΘΗΚΩΝ

ΤΜΗΜΑ 1 : ΣΥΝΟΜΟΛΟΓΗΣΙΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 6.

Ἱκανότης τῶν κρατῶν συνομολογήσεως συνθηκῶν.

Ἕκαστον κράτος κέκτηται τὴν ἱκανότητα συνάψεως συνθηκῶν.

Ἄρθρον 7.

Πληρεξουσιότης.

1. Πρόσωπόν τι θεωρεῖται ἀντιπρόσωπος τοῦ κράτους πρὸς υἱοθέτησιν ἢ ἐπιβεβαίωσιν τοῦ κειμένου τῆς συνθήκης ἢ πρὸς ἔκφρασιν τῆς συναινέσεως τοῦ κράτους ὅπως δεσμευθῇ διὰ τῆς συνθήκης, ἐάν :

(α) ἐπιδείξῃ κατάλληλον πληρεξουσιότητα, ἢ

(β) προκύπτῃ ἐκ τῆς πρακτικῆς τῶν ἐνδιαφερομένων κρατῶν ἢ ἐξ ἄλλων συνθηκῶν, ὅτι ἦτο ἡ πρόθεσίς των ν' ἀναγνωρίσουν τοῦτο ὡς ἀντιπρόσωπον τοῦ κράτους διὰ τοὺς ὡς ἄνω σκοποὺς χωρὶς νὰ ζητήσουν τὴν παρουσίασιν τοῦ πληρεξουσίου ἐγγράφου.

2. Ὡς ἐκ τῆς θέσεώς των, οἱ κάτωθι θεωροῦνται ὡς ἐκπροσωποῦντες τὸ κράτος των, ἄνευ ὑποχρεώσεως ἐπιδείξεως πληρεξουσιότητος :

(α) Ἀρχηγοὶ κρατῶν, Πρόεδροι Κυβερνήσεων καὶ Ὑπουργοὶ Ἐξωτερικῶν ἐπὶ τῷ τέλει διενεργείας ἁπασῶν τῶν ἀναφερομένων εἰς τὴν σύναψιν τῆς συνθήκης πράξεων,

(β) Ἀρχηγοὶ Διπλωματικῶν Ἀποστολῶν, ἐπὶ τῷ τέλει υἱοθετήσεως τοῦ κειμένου συνθήκης μεταξὺ τοῦ διαπιστεύοντος κράτους καὶ τοῦ παρ' ᾧ ἡ διαπίστευσις,

(γ) Ἀντιπρόσωποι διαπεπιστευμένοι ὑπὸ τῶν κρατῶν εἰς διεθνῆ διάσκεψιν ἢ διεθνῆ ὀργανισμὸν ἢ ὄργανον τούτου ἐπὶ τῷ τέλει υἱοθετήσεως τοῦ κειμένου συνθήκης ἐν τῇ ὡς ἄνω διασκέψει, ὀργανισμῷ ἢ ὀργάνῳ.

Ἄρθρον 8.

Μεταγενεστέρα ἐπιβεβαίωσις πράξεως ἐνεργηθείσης ἄνευ ἐξουσιοδοτήσεως.

Πρᾶξις ἀναφερομένη εἰς τὴν σύναψιν συνθήκης, ἐνεργηθεῖσα ὑπὸ προσώπου, μὴ δυναμένου νὰ θεωρηθῇ κατὰ τὸ ἄρθρον 7 ὡς ἐξουσιοδοτούμενον ν' ἀντιπροσωπεύσῃ τὸ κράτος πρὸς τοῦτο, εἶναι ἄνευ νομικοῦ ἀποτελέσματος ἐκτὸς ἐὰν μεταγενεστέρως ἐπιβεβαιωθῇ ὑπὸ τοῦ κράτους τούτου.

Ἄρθρον 9.

Υἱοθέτησις τοῦ κειμένου.

1. Ἡ υἱοθέτησις τοῦ κειμένου συνθήκης γίνεται τῇ συναινέσει ἁπάντων τῶν κρατῶν, τῶν μετασχόντων εἰς τὴν ἐκπόνησιν ταύτης, ἐξαιρουμένης τῆς ἐν παραγράφῳ 2 περιπτώσεως :

2. Ἡ υἱοθέτησις τοῦ κειμένου συνθήκης ἐν διεθνεῖ διασκέψει πραγματοποιεῖται διὰ τῆς ψήφου τῶν δύο τρίτων τῶν παρόντων καὶ ψηφιζόντων κρατῶν, ἐκτὸς ἐὰν τὰ κράτη ταῦτα, διὰ τῆς ὡς ἄνω πλειοψηφίας ἀποφασίσουν νὰ ἐφαρμόσουν διάφορον κανόνα.

Ἄρθρον 10.

Ἐπιβεβαίωσις τοῦ κειμένου.

Τὸ κείμενον συνθήκης καθίσταται αὐθεντικὸν καὶ ὁριστικόν :

(α) κατὰ τὴν διαδικασίαν τὴν προβλεπομένην ἐν τῷ κειμένῳ ἢ συμφωνουμένην παρὰ τῶν ἐν τῇ ἐκπονήσει τῆς συνθήκης μετεχόντων κρατῶν, ἢ

(β) ἐλλείψει τοιαύτης διαδικασίας, διὰ τῆς ὑπογραφῆς, ὑπογραφῆς AD REFERENDUM ἢ μονογραφῆς ὑπὸ τῶν ἀντιπροσώπων τῶν κρατῶν τοῦ κειμένου τῆς συνθήκης ἢ τῆς Τελικῆς Πράξεως τῆς διασκέψεως, ἐν τῇ ὁποίᾳ ἔχει καταχωρηθῇ τὸ κείμενον.

Ἄρθρον 11.

Τρόποι ἐκφράσεως τῆς συναινέσεως πρὸς δέσμευσιν διὰ τῆς συνθήκης.

Ἡ συναίνεσις τοῦ κράτους ὅπως δεσμευθῇ διὰ τῆς συνθήκης δύναται νὰ δοθῇ διὰ τῆς ὑπογραφῆς, ἀνταλλαγῆς ὀργάνων, ἀποτελούντων συνθήκην, ἐπικυρώσεως, ἀποδοχῆς ἐγκρίσεως ἢ προσχωρήσεως, ἢ δι' οἱουδήποτε ἑτέρου συμπεφωνημένου τρόπου.

Ἄρθρον 12.

Συναίνεσις πρὸς δέσμευσιν διὰ τῆς συνθήκης παρεχομένη δι' ὑπογραφῆς.

1. Ἡ συναίνεσις τοῦ κράτους ὅπως δεσμευθῇ διὰ τῆς συνθήκης παρέχεται διὰ τῆς ὑπογραφῆς τοῦ ἀντιπροσώπου τοῦ κράτους τούτου, ὁσάκις :

(α) Ἡ συνθήκη προβλέπει ὅτι ἡ ὑπογραφὴ θὰ ἔχῃ τὸ ἀποτέλεσμα τοῦτο.

(β) Προκύπτει ἄλλως, ὅτι τὰ κράτη τὰ ὁποῖα μετέσχον εἰς τὴν διαπραγμάτευσιν συνεφώνησαν ὅτι ἡ συνθήκη θὰ ἔχῃ τὸ ἀποτέλεσμα τοῦτο, ἢ

(γ) ἡ πρόθεσις τοῦ κράτους νὰ προσδώσῃ τοιοῦτον ἀποτέλεσμα εἰς τὴν ὑπογραφήν, προκύπτει ἐκ τῶν πληρεξουσίων τοῦ ἀντιπροσώπου του ἢ ἐξεδηλώθη κατὰ τὴν διάρκειαν τῶν διαπραγματεύσεων.

2. Διὰ τοὺς σκοποὺς τῆς παραγράφου 1 :

(α) Ἡ μονογραφὴ ἑνὸς κειμένου ἰσοδυναμεῖ πρὸς ὑπογραφὴν τῆς συνθήκης ἐὰν προκύψῃ, ὅτι τὰ κράτη τὰ ὁποῖα μετέσχον τῶν διαπραγματεύσεων, οὕτω συνεφώνησαν,

(β) ἡ ὑπογραφὴ AD REFERENDUM συνθήκης ὑπὸ ἀντιπροσώπου κράτους τινὸς ἰσοδυναμεῖ πρὸς ὁριστικὴν ὑπογραφὴν τῆς συνθήκης, ἐὰν ἐπιβεβαιωθῇ παρὰ τοῦ τελευταίου τούτου.

Ἄρθρον 13.

Συναίνεσις πρὸς δέσμευσιν διὰ συνθήκης ἐκφραζομένη δι' ἀνταλλαγῆς ὀργάνων ἀποτελούντων συνθήκην.

Ἡ συναίνεσις κρατῶν ὅπως δεσμευθοῦν διὰ συνθήκης ἀποτελουμένης ἐξ ὀργάνων ἀνταλλαγέντων μεταξύ των, παρέχεται, ὁσάκις :

(α) τὰ ὄργανα προβλέπουν, ὅτι ἡ ἀνταλλαγή των θὰ ἔχῃ τὸ ἀποτελέσμα τοῦτο, ἢ

(β) ἐὰν ἄλλως προκύπτῃ, ὅτι τὰ κράτη ταῦτα συνεφώνησαν ὅτι ἡ ἀνταλλαγὴ τῶν ὀργάνων θὰ ἔχῃ τὸ ἀποτέλεσμα τοῦτο.

Ἄρθρον 14.

Συναίνεσις πρὸς δέσμευσιν διὰ συνθήκης παρεχομένη διὰ ἐπικυρώσεως ἀποδοχῆς ἢ ἐγκρίσεως.

1. Ἡ συναίνεσις τοῦ κράτους ὅπως δεσμευθῇ διὰ συνθήκης παρέχεται διὰ τῆς ἐπικυρώσεως, ὁσάκις :

(α) ἡ συνθήκη προβλέπει ὅτι ἡ συναίνεσις αὕτη παρέχεται διὰ τῆς ἐπικυρώσεως,

(β) ἄλλως προκύπτει ὅτι τὰ κράτη τὰ ὁποῖα μετέσχον εἰς τὴν διαπραγμάτευσιν συνεφώνησαν, ὅτι ἡ ἐπικύρωσις θὰ εἶναι ἀναγκαία,

(γ) ὁ ἀντιπρόσωπος τοῦ κράτους τούτου ὑπέγραψε τὴν συνθήκην, ὑπὸ τὴν ἐπιφύλαξιν τῆς ἐπικυρώσεως, ἢ

(δ) ἡ πρόθεσις τοῦ κράτους τούτου νὰ ὑπογράψῃ τὴν συνθήκην ὑπὸ τὴν ἐπιφύλαξιν τῆς ἐπικυρώσεως, προκύπτει ἐκ τῶν πληρεξουσίων ἐγγράφων τοῦ ἀντιπροσώπου του ἢ ἔχει δηλωθῇ κατὰ τὴν διάρκειαν τῆς διαπραγματεύσεως.

2. Ἡ συναίνεσις τοῦ κράτους ὅπως δεσμευθῇ διὰ συνθήκης παρέχεται δι' ἀποδοχῆς ἢ ἐγκρίσεως ὑπὸ ὅρους ἀναλόγους πρὸς ἐκείνους οἱ ὁποῖοι ἐφαρμόζονται ἐπὶ τῆς ἐπικυρώσεως.

Ἄρθρον 15.

Συναίνεσις πρὸς δέσμευσιν διὰ συνθήκης παρεχομένη διὰ προσχωρήσεως.

Ἡ συναίνεσις κράτους ὅπως δεσμευθῇ διὰ συνθήκης παρέχεται διὰ τῆς προσχωρήσεως, ὁσάκις :

(α) ἡ συνθήκη προβλέπει ὅτι ἡ συναίνεσις αὕτη δύναται νὰ παρασχεθῇ ὑπὸ τοῦ κράτους τούτου διὰ τῆς προσχωρήσεως,

(β) ἄλλως προκύπτει, ὅτι τὰ κράτη τὰ ὁποῖα μετέσχον εἰς τὴν διαπραγμάτευσιν συνεφώνησαν ὅτι ἡ συναίνεσις αὕτη θὰ ἠδύνατο νὰ παρασχεθῇ ὑπὸ τοῦ κράτους τούτου διὰ τῆς προσχωρήσεως,

(γ) ἅπαντα τὰ μέρη συνεφώνησαν μεταγενεστέρως, ὅτι ἡ τοιαύτη συναίνεσις θὰ ἠδύνατο νὰ παρασχεθῇ παρὰ τοῦ κράτους διὰ τῆς προσχωρήσεως.

Ἄρθρον 16.

Ἀνταλλαγὴ ἢ κατάθεσις τῶν ὀργάνων τῆς ἐπικυρώσεως, ἀποδοχῆς, ἐγκρίσεως ἢ προσχωρήσεως.

Ἐκτὸς ἐὰν ἄλλως προβλέπῃ ἡ συνθήκη, τὰ ὄργανα τῆς ἐπικυρώσεως, ἀποδοχῆς, ἐγκρίσεως ἢ προσχωρήσεως συνιστοῦν τὴν συναίνεσιν τοῦ κράτους ὅπως δεσμευθῇ διὰ ταύτης, κατὰ τὴν στιγμήν :

(α) τῆς ἀνταλλαγῆς αὐτῶν μεταξὺ τῶν συμβαλλομένων κρατῶν,

(β) τῆς καταθέσεως αὐτῶν παρὰ τῷ Θεματοφύλακι,

(γ) τῆς γνωστοποιήσεως εἰς τὰ συμβαλλόμενα κράτη καὶ εἰς τὸν Θεματοφύλακα, ἐὰν οὕτω συνεφωνήθη.

Ἄρθρον 17.

Συναίνεσις πρὸς δέσμευσιν ὑπὸ μέρους τῆς συνθήκης καὶ ἐπιλογὴ μεταξὺ διαφόρων διατάξεων.

1. Ἐπιφυλασσομένων τῶν ἄρθρων 19 – 23, ἡ συναίνεσις κράτους τινὸς ὅπως δεσμευθῇ ὑπὸ μέρους συνθήκης τινὸς δὲν δημιουργεῖ ἀποτελέσματα παρὰ μόνον ὅταν ἡ συνθήκη ἐπιτρέπῃ τοῦτο ἢ ὅταν τὰ ἄλλα συμβαλλόμενα κράτη συναινοῦν εἰς τοῦτο.

2. Ἡ συναίνεσις τοῦ κράτους ὅπως δεσμευθῇ διὰ τῆς συνθήκης, ἐπιτρεπούσης ἐπιλογὴν μεταξὺ διαφόρων διατάξεων ταύτης, δὲν δημιουργεῖ ἀποτελέσματα, παρὰ μόνον ἐὰν καταστῇ σαφὲς διὰ ποίας ἐκ τῶν διατάξεων παρέχεται ἡ συναίνεσις.

Ἄρθρον 18.

Ὑποχρέωσις περὶ μὴ ἀποστερήσεως συνθήκης τινὸς τοῦ ἀντικειμένου καὶ τοῦ σκοποῦ της πρὸ τῆς θέσεώς της ἐν ἰσχύι.

Τὸ Κράτος ὑποχρεοῦται ὅπως ἀπόσχῃ ἐκ πράξεων, αἵτινες θ' ἀπεστέρουν συνθήκην τινὰ τοῦ ἀντικειμένου καὶ σκοποῦ ταύτης ὁσάκις :

(α) ὑπέγραψε τὴν συνθήκην ἢ προέβη εἰς ἀνταλλαγὴν ὀργάνων ἀποτελούντων συνθήκην ὑπὸ τὴν ἐπιφύλαξιν τῆς ἐπικυρώσεως, ἀποδοχῆς ἢ ἐγκρίσεως, ἐφ' ὅσον δὲν ἐξεδήλωσε τὴν πρόθεσίν του νὰ καταστῇ μέρος ταύτης, ἢ

(β) ἐξεδήλωσε τὴν συναίνεσιν ὅπως δεσμευθῇ διὰ τῆς συνθήκης ἐντὸς τῆς περιόδου ἥτις προηγεῖται τῆς θέσεως ἐν ἰσχύι τῆς συνθήκης καὶ ὑπὸ τὸν ὅρον ὅτι ἡ διαδικασία αὕτη δὲν θὰ καθυστερήσῃ ἀδικαιολογήτως.

ΕΠΙΦΥΛΑΞΕΙΣ

Ἄρθρον 19.

Διατύπωσις ἐπιφυλάξεων.

Ἓν κράτος δύναται, κατὰ τὴν ὑπογραφήν, ἐπικύρωσιν, ἀποδοχήν, ἔγκρισιν συνθήκης ἢ προσχώρησιν εἰς αὐτήν, νὰ διατυπώσῃ ἐπιφύλαξιν ἐκτὸς ἐάν :

(α) ἡ ἐπιφύλαξις ἀπαγορεύεται ὑπὸ τῆς συνθήκης,

(β) ἡ συνθήκη ὁρίζῃ, ὅτι μόνον καθοριζόμεναι ἐπιφυλάξεις, εἰς ἃς δὲν περιλαμβάνεται ἡ ἐν θέματι ἐπιφύλαξις δύνανται νὰ γίνουν, ἢ

(γ) εἰς περιπτώσεις μὴ ἐμπιπτούσας εἰς τὰς ὑπὸ παραγράφους (α) καὶ (β) ἡ ἐπιφύλαξις εἶναι ἀσυμβίβαστος πρὸς τὸ ἀντικείμενον καὶ τὸν σκοπὸν τῆς συνθήκης.

Ἄρθρον 20.

Ἀποδοχὴ ἐπιφυλάξεων καὶ ἀντιρρήσεις εἰς ταύτας.

1. Ἐπιφύλαξις ρητῶς ἐπιτρεπομένη ὑπὸ τῆς συνθήκης οὐδεμίαν μεταγενεστέραν ἀποδοχὴν ὑπὸ τῶν ἄλλων συμβαλλομένων κρατῶν ἀπαιτεῖ ἐκτὸς ἐὰν ἡ συνθήκη οὕτως ὁρίζῃ.

2. Ἐὰν ἐκ τοῦ περιωρισμένου ἀριθμοῦ τῶν κρατῶν τὰ ὁποῖα μετέσχον εἰς τὴν διαπραγμάτευσιν ὡς καὶ τοῦ ἀντικειμένου καὶ τοῦ σκοποῦ συνθήκης τινὸς προκύπτῃ ὅτι ἡ ἐφαρμογὴ τῆς συνθήκης ἐν τῇ ὁλότητι αὐτῆς, μεταξὺ ὅλων τῶν μερῶν ἀποτελεῖ οὐσιώδη προϋπόθεσιν τῆς συναινέσεως ἑνὸς ἑκάστου τούτων πρὸς δέσμευσιν διὰ τῆς συνθήκης, ἡ ἐπιφύλαξις ἀπαιτεῖ ἀποδοχὴν ὑφ' ὅλων τῶν μερῶν.

3. Ἐὰν συνθήκη τις ἀποτελεῖ ἱδρυτικὴν πρᾶξιν διεθνοῦς ὀργανισμοῦ καὶ ἐκτὸς ἐὰν ἄλλως ὁρίζεται, ἡ ἐπιφύλαξις ἀπαιτεῖ τὴν ἀποδοχὴν ὑπὸ τοῦ ἁρμοδίου ὀργάνου τοῦ ὀργανισμοῦ τούτου.

4. Εἰς περιπτώσεις μὴ ἐμπιπτούσας εἰς τὰς ἀνωτέρω παραγράφους καὶ ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ :

(α) Ἀποδοχὴ ὑπὸ ἑτέρου συμβαλλομένου κράτους ἐπιφυλάξεώς τινος καθιστᾷ τὸ ἐπιφυλασσόμενον κράτος μέρος τῆς συνθήκης ἐν σχέσει πρὸς αὐτὸ τὸ ἕτερον κράτος ἐὰν ἡ συνθήκη εἶναι ἐν ἰσχύι ἢ ὁσάκις τίθεται ἐν ἰσχύι μεταξὺ τῶν κρατῶν τούτων.

(β) Ἀντίρρησις ὑπὸ ἑτέρου συμβαλλομένου κράτους εἰς ἐπιφύλαξίν τινα δὲν ἀποκλείει τὴν θέσιν τῆς συνθήκης ἐν ἰσχύι ὡς πρὸς τὰ διατυποῦντα τὴν ἀντίρρησιν καὶ τὴν ἐπιφύλαξιν κράτη ἐκτὸς ἐὰν ἀντίθετος πρόθεσις σαφῶς ἐκφράζεται ὑπὸ τοῦ διατυπώσαντος τὴν ἀντίρρησιν κράτους.

(γ) Πρᾶξις ἐκφράζουσα τὴν συναίνεσιν κράτους τινὸς ὅπως δεσμευθῇ διὰ τῆς συνθήκης καὶ περιλαμβάνουσα ἐπιφύλαξιν, ἰσχύει ἀφ' ἧς ἓν τοὐλάχιστον ἕτερον συμβαλλόμενον κράτος ἀποδεχθῇ τὴν ἐπιφύλαξιν.

5. Διὰ τοὺς σκοποὺς τῶν παραγράφων 2 καὶ 4 καὶ ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ, ἐπιφύλαξίς τις θεωρεῖται ὡς γενομένη ἀποδεκτὴ ὑπὸ κράτους τινός, ἂν τοῦτο δὲν ἔχῃ διατυπώσει ἀντίρρησιν εἰς τὴν ἐπιφύλαξιν εἴτε μέχρι τῆς ἐκπνοῆς 12μήνου περιόδου ἀπὸ τῆς εἰς τοῦτο ἀνακοινώσεως τῆς ἐπιφυλάξεως εἴτε μέχρι τῆς ἡμερομηνίας κατὰ τὴν ὁποίαν ἐξέφρασε τὴν συναίνεσίν του ὅπως δεσμευθῇ διὰ τῆς συνθήκης ἐὰν αὕτη εἶναι μεταγενεστέρα.

Ἄρθρον 21.

Νομικαὶ συνέπειαι ἐπιφυλάξεων καὶ ἀντιρρήσεων εἰς ἐπιφυλάξεις.

1. Ἐπιφύλαξις ἰσχύουσα ἐν σχέσει πρὸς ἕτερον μέρος συμφώνως πρὸς τὰ ἄρθρα 19, 20 καὶ 23 :

(α) Τροποποιεῖ διὰ τὸ ἐπιφυλασσόμενον κράτος, εἰς τὰς μετὰ τοῦ ἑτέρου ἐκείνου μέρους σχέσεις του, τὰς διατάξεις τῆς συνθήκης εἰς τὰς ὁποίας ἀφορᾷ ἡ ἐπιφύλαξις, κατὰ τὴν ἔκτασιν τὴν προβλεπομένην ὑπὸ τῆς ἐπιφυλάξεως καὶ

(β) Τροποποιεῖ κατὰ τὴν αὐτὴν ἔκτασιν τὰς διατάξεις ταύτας διὰ τὸ ἕτερον ἐκεῖνο μέρος εἰς τὰς σχέσεις του μετὰ τοῦ ἐπιφυλασσομένου κράτους.

2. Ἡ ἐπιφύλαξις δὲν τροποποιεῖ τὰς διατάξεις τῆς συνθήκης διὰ τὰ ἄλλα μέρη εἰς τὰς μεταξύ των σχέσεις.

3. Ὅταν κράτος τὸ ὁποῖον διετύπωσεν ἀντίρρησιν εἰς τὴν ἐπιφύλαξιν δὲν ἀντετάχθη εἰς τὴν θέσιν ἐν ἰσχύι τῆς συνθήκης μεταξὺ αὐτοῦ καὶ τοῦ ἐπιφυλασσομένου κράτους αἱ διατάξεις εἰς ἃς ἀφορᾷ ἡ ἐπιφύλαξις δὲν ἐφαρμόζονται μεταξὺ τῶν δύο τούτων κρατῶν κατὰ τὴν ἔκτασιν τὴν προβλεπομένην ὑπὸ τῆς ἐπιφυλάξεως.

Ἄρθρον 22.

Ἀνάκλησις ἐπιφυλάξεων καὶ ἀντιρρήσεων εἰς ἐπιφυλάξεις.

1. Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ, ἐπιφύλαξίς τις δύναται νὰ ἀνακληθῇ ἀνὰ πᾶσαν στιγμὴν χωρὶς νὰ εἶναι ἀναγκαία ἡ συναίνεσις τοῦ κράτους τοῦ ἀποδεχθέντος τὴν ἐπιφύλαξιν.

2. Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ, ἀντίρρησις εἰς ἐπιφύλαξιν δύναται νὰ ἀνακληθῇ ἀνὰ πᾶσαν στιγμήν.

3. Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ, ἢ ἄλλως συμφωνηθῇ :

(α) Ἡ ἀνάκλησις ἐπιφυλάξεως ἰσχύει ἐν σχέσει πρὸς ἕτερον συμβαλλόμενον κράτος μόνον ὅταν ἡ ἀνακοίνωσις της ἐλήφθη ὑπὸ τοῦ κράτους τούτου.

(β) Ἡ ἀνάκλησις ἀντιρρήσεως εἰς ἐπιφύλαξιν ἰσχύει μόνον ὅταν ἡ ἀνακοίνωσίς της ἐλήφθη ὑπὸ τοῦ διατυπώσαντος τὴν ἐπιφύλαξιν κράτους.

Ἄρθρον 23.

Διαδικασία ἀφορῶσα εἰς τὰς ἐπιφυλάξεις.

1. Ἡ ἐπιφύλαξις, ἡ ρητὴ ἀποδοχὴ τῆς ἐπιφυλάξεως καὶ ἡ ἀντίρρησις εἰς ἐπιφύλαξιν τινὰ δέον ὅπως διατυπῶνται ἐγγράφως καὶ κοινοποιῶνται πρὸς τὰ συμβαλλόμενα κράτη δικαιούμενα νὰ μετάσχουν τῆς συνθήκης.

2. Ἐὰν διετυπώθη κατὰ τὴν ὑπογραφὴν τῆς συνθήκης ὑπὸ τὴν ἐπιφύλαξιν τῆς ἐπικυρώσεως, ἀποδοχῆς ἢ ἐγκρίσεως, ἡ ἐπιφύλαξις δέον ὅπως ἐπιβεβαιωθῇ ρητῶς ὑπὸ τοῦ ἐπιφυλασσομένου κράτους κατὰ τὴν στιγμὴν κατὰ τὴν ὁποίαν παρέχει τὴν συναίνεσίν του ὅπως δεσμευθῇ διὰ τῆς συνθήκης. Ἐν τοιαύτῃ περιπτώσει ἡ ἐπιφύλαξις θεωρεῖται ὡς γενομένη κατὰ τὴν ἡμερομηνίαν τῆς ἐπιβεβαιώσεώς της.

3. Ρητὴ ἀποδοχὴ ἐπιφυλάξεως ἢ ἀντιρρήσεως πρὸς ταύτην, ὡς γενόμεναι πρὸ τῆς ἐπιβεβαιώσεως τῆς ἐπιφυλάξεως δὲν ἀπαιτοῦν ἐπιβεβαίωσιν.

4. Ἡ ἀνάκλησις ἐπιφυλάξεως ἢ ἀντιρρήσεως εἰς ἐπιφύλαξιν δέον ὅπως διατυπωθῇ ἐγγράφως.

ΤΜΗΜΑ 3 : ΘΕΣΙΣ ΕΝ ΙΣΧΥΙ ΚΑΙ ΠΡΟΣΩΡΙΝΗ ΕΦΑΡΜΟΓΗ ΤΩΝ ΣΥΝΘΗΚΩΝ.

Ἄρθρον 24.

Θέσις ἐν ἰσχύι

1. Ἡ συνθήκη τίθεται ἐν ἰσχύι κατὰ τὸν τρόπον καὶ κατὰ τὴν ἡμερομηνίαν ἣν αὕτη προβλέπει ἢ διὰ συμφωνίας τῶν μετασχόντων τῆς διαπραγματεύσεως κρατῶν.

2. Ἐλλείψει τοιαύτης διατάξεως ἢ συμφωνίας ἡ συνθήκη τίθεται ἐν ἰσχύι εὐθὺς ὡς ἡ συναίνεσις πρὸς δέσμευσιν δι' αὐτῆς παρεσχέθη ὑφ' ὅλων τῶν μετασχόντων εἰς τὴν διαπραγμάτευσιν κρατῶν.

3. Ὁσάκις ἡ συναίνεσις ἑνὸς κράτους ὅπως δεσμευθῇ διὰ τῆς συνθήκης παρέχεται εἰς ἡμερομηνίαν μεταγενεστέραν τῆς θέσεως ἐν ἰσχύι ταύτης, αὕτη δεσμεύει τὸ κράτος τοῦτο ἀπὸ τῆς ἐν λόγῳ ἡμερομηνίας, ἐκτὸς ἐὰν ἄλλως ὁρίζεται ἐν τῇ συνθήκῃ.

4. Αἱ διατάξεις τῆς συνθήκης, αἱ ὁποῖαι διακανονίζουν τὰ τῆς ἐπιβεβαιώσεως τοῦ κειμένου ταύτης, τὴν παροχὴν τῆς συναινέσεως τῶν κρατῶν ὅπως δεσμευθοῦν διὰ τῆς συνθήκης, τὸν τρόπον καὶ τὴν ἡμερομηνίαν θέσεως ἐν ἰσχύι ταύτης, τὰς ἐπιφυλάξεις, τὰ καθήκοντα τοῦ θεματοφύλακος ὡς καὶ ἕτερα θέματα ἀνακύπτοντα κατ' ἀνάγκην πρὸ τῆς θέσεως ἐν ἰσχύι τῆς συνθήκης ἐφαρμόζονται ἀπὸ τῆς υἱοθετήσεως τοῦ κειμένου.

Ἄρθρον 25.

Προσωρινὴ Ἐφαρμογή.

1. Συνθήκη ἢ τμῆμα συνθήκης ἐφαρμόζεται προσωρινῶς ἐν ἀναμονῇ τῆς ἐνάρξεως τῆς ἰσχύος αὐτῆς :

(α) Ἐὰν ἡ συνθήκη αὕτη οὕτως ὁρίζῃ ἢ

(β) ἐὰν τὰ μετασχόντα τῆς διαπραγματεύσεως κράτη οὕτω συνεφώνησαν κατ' ἄλλον τρόπον.

2. Ἐξαιρέσει τῆς περιπτώσεως καθ' ἣν ἡ συνθήκη ἄλλως ὁρίζει ἢ καθ' ἣν τὰ μετασχόντα τῆς διαπραγματεύσεως κράτη ἄλλως συνεφώνησαν, ἡ προσωρινὴ ἐφαρμογὴ τῆς συνθήκης ἢ τμήματος συνθήκης ὡς πρὸς ἓν κράτος τερματίζεται ἐὰν τὸ κράτος τοῦτο κοινοποιήσῃ εἰς τὰ ἄλλα κράτη, μεταξὺ τῶν ὁποίων ἡ συνθήκη ἐφαρμόζεται προσωρινῶς, τὴν πρόθεσίν του νὰ μὴ καταστῇ μέρος εἰς τὴν συνθήκην.

ΜΕΡΟΣ ΙΙΙ

ΣΕΒΑΣΜΟΣ, ΕΦΑΡΜΟΓΗ ΚΑΙ ΕΡΜΗΝΕΙΑ ΤΩΝ ΣΥΝΘΗΚΩΝ

ΤΜΗΜΑ 1 : ΤΗΡΗΣΙΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 26.

PACTA SUNT SERVANDA

Ἑκάστη συνθήκη ἐν ἰσχύι, δεσμεύει τὰ εἰς αὐτὴν συμβαλλόμενα μέρη καὶ δέον νὰ τηρῆται καλῇ τῇ πίστει.

Ἄρθρον 27.

Ἐσωτερικὸν Δίκαιον καὶ τήρησις τῶν συνθηκῶν.

Τὸ συμβαλλόμενον ἐν τῇ συνθήκῃ μέρος δὲν δύναται νὰ ἐπικαλεσθῇ τὰς διατάξεις τοῦ ἐσωτερικοῦ του δικαίου ὡς δικαιολογίαν διὰ τὴν μὴ ὑπ' αὐτοῦ τήρησιν τῆς συνθήκης. Ἡ διάταξις αὕτη δὲν θίγει τὸ ἄρθρον 46.

ΤΜΗΜΑ 2 : ΕΦΑΡΜΟΓΗ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 28.

Μὴ ἀναδρομικὴ ἰσχὺς τῶν συνθηκῶν.

Ἐξαιρέσει τῆς περιπτώσεως καθ' ἣν ὑφίσταται διάφορος πρόθεσις, προκύπτουσα ἐκ τῆς συνθήκης ἢ ἄλλως πως αἱ διατάξεις τῆς συνθήκης δὲν δεσμεύουν ἓν μέρος δι' οἱανδήποτε πρᾶξιν ἢ γεγονός, τὸ ὁποῖον ἔλαβε χώραν ἢ οἱανδήποτε κατάστασιν ἡ ὁποία ἔπαυσεν ὑφισταμένη, πρὸ τῆς ἡμερομηνίας θέσεως τῆς συνθήκης ἐν ἰσχύι ὡς πρὸς τοῦτο.

Ἄρθρον 29.

Ἐδαφικὴ ἐφαρμογὴ τῆς συνθήκης.

Ἐξαιρέσει τῆς περιπτώσεως καθ' ἣν ὑφίσταται διάφορος πρόθεσις, προκύπτουσα ἐκ τῆς συνθήκης ἢ ἄλλως πως ἡ συνθήκη δεσμεύει ἕκαστον μέρος ἐπὶ ὁλοκλήρου τοῦ ἐδάφους του.

Ἄρθρον 30.

Ἐφαρμογὴ διαδοχικῶν συνθηκῶν ἀναφερομένων εἰς τὸ αὐτὸ ἀντικείμενον.

1. Συμφώνως τῷ ἄρθρῳ 103 τοῦ Χάρτου τῶν Ἡνωμένων Ἐθνῶν, τὰ δικαιώματα καὶ αἱ ὑποχρεώσεις τῶν κρατῶν τῶν συμβαλλομένων εἰς διαδοχικὰς συνθήκας, ἀναφερομένας εἰς τὸ αὐτὸ ἀντικείμενον καθορίζονται κατὰ τὰς κατωτέρω παραγράφους :

2. Ὅτε ἡ συνθήκη ὁρίζει ὅτι ὑπόκειται εἰς τὰς διατάξεις προγενεστέρας ἢ μεταγενεστέρας συνθήκης ἢ ὅτι δὲν θὰ ἔδει νὰ θεωρῆται ἀσυμβίβαστος πρὸς αὐτάς, προέχουν αἱ διατάξεις τῆς συνθήκης εἰς τὴν ὁποίαν γίνεται ἡ ἀναφορά.

3. Ὅτε ἅπαντες οἱ συμβαλλόμενοι εἰς προγενεστέραν συνθήκην τυγχάνουν ἐπίσης συμβαλλόμενοι εἰς μεταγενεστέραν τοιαύτην, τῆς πρώτης ἐξ αὐτῶν μὴ καταργηθείσης ἢ ἀνασταλείσης, συμφώνως πρὸς τὸ ἄρθρον 59, ἡ προγενεστέρα συνθήκη ἐφαρμόζεται καθ' ὃ μέτρον αἱ διατάξεις ταύτης δὲν συγκρούονται πρὸς τὰς διατάξεις τῆς μεταγενεστέρας τοιαύτης.

4. Ὅτε (τὰ συμβαλλόμενα μέρη) εἰς τὴν μεταγενεστέραν συνθήκην δὲν τυγχάνουν ἅπαντα τὰ συμβαλλόμενα εἰς τὴν προγενεστέραν συνθήκην μέρη :

(α) Ἰσχύει ἡ διάταξις τῆς ὡς ἄνω παραγράφου 3 διὰ τὰ συμβαλλόμενα μέρη εἰς ἀμφοτέρας τὰς συνθήκας.

(β) Μεταξὺ κράτους συμβαλλομένου εἰς ἀμφοτέρας τὰς συνθήκας καὶ ἑτέρου συμβαλλομένου εἰς μόνον μίαν ἐξ αὐτῶν, τὰ ἀμοιβαῖα αὐτῶν δικαιώματα καὶ ὑποχρεώσεις διέπει ἡ συνθήκη εἰς τὴν ὁποίαν ἀμφότερα τὰ κράτη τυγχάνουν συμβαλλόμενα μέρη.

5. Ἡ παράγραφος 4 δὲν θίγει τὸ ἄρθρον 41 ἢ οἱονδήποτε ζήτημα ἀφορῶν εἰς τὴν λῆξιν ἢ εἰς τὴν ἀναστολὴν λειτουργίας τῆς συνθήκης, κατὰ τὸ ἄρθρον 60, ἢ οἱονδήποτε ζήτημα εὐθύνης τὸ ὁποῖον ἤθελε προκύψει δι' ἓν κράτος ἐκ τῆς συνομολογήσεως ἢ τῆς ἐφαρμογῆς συνθήκης, αἱ διατάξεις τῆς ὁποίας τυγχάνουν ἀσυμβίβαστοι πρὸς τὰς ὑποχρεώσεις του ἔναντι ἑτέρου κράτους δυνάμει ἑτέρας συνθήκης.

ΤΜΗΜΑ 3 : ΕΡΜΗΝΕΙΑ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 31.

Γενικὸς κανὼν ἑρμηνείας.

1. Ἡ συνθήκη δέον νὰ ἑρμηνεύηται καλῇ τῇ πίστει συμφώνως πρὸς τὴν συνήθη ἔννοιαν ἥτις δίδεται εἰς τοὺς ὅρους τῆς συνθήκης, ἐν τῷ συνόλῳ αὐτῶν καὶ ὑπὸ τὸ φῶς τοῦ ἀντικειμένου καὶ τοῦ σκοποῦ της.

2. Τὸ σύνολον τῆς συνθήκης, διὰ τοὺς σκοποὺς ἑρμηνείας ταύτης, ἐκτὸς τοῦ κειμένου, περιέχοντος τὸ προοίμιον καὶ τὰ παραρτήματα αὐτῆς, περιλαμβάνει :

(α) Πᾶσαν συμφωνίαν σχετικὴν πρὸς τὴν συνθήκην, ἥτις συνωμολογήθη μεταξὺ ὅλων τῶν μερῶν, ἐπ' εὐκαιρίᾳ τῆς συνάψεως τῆς συνθήκης.

(β) Πᾶν ἔγγραφον, τὸ ὁποῖον συνετάγη ὑφ' ἑνὸς ἢ πλειόνων μερῶν ἐν σχέσει πρὸς τὴν σύναψιν τῆς συνθήκης, τὸ ὁποῖον ἐγένετο ἀποδεκτὸν ὑπὸ τῶν ἄλλων μερῶν ὡς ἔγγραφον σχετιζόμενον πρὸς τὴν συνθήκην.

3. Ὁμοῦ μετὰ τοῦ συνόλου τῆς συνθήκης δέον νὰ λαμβάνωνται ὑπ' ὄψιν :

(α) Πᾶσα μεταγενεστέρα συμφωνία μεταξὺ τῶν μερῶν ἀφορῶσα εἰς τὴν ἑρμηνείαν τῆς συνθήκης ἢ τὴν ἐφαρμογὴν τῶν διατάξεων ταύτης.

(β) Πᾶσα μεταγενεστέρα πρακτικὴ ἀκολουθηθεῖσα ὑπὸ τῶν συμβαλλομένων μερῶν κατὰ τὴν ἐφαρμογὴν τῆς συνθήκης ἡ ὁποία συνιστᾷ συμφωνίαν αὐτῶν ὡς πρὸς τὴν ἑρμηνείαν ταύτης.

(γ) Ἅπαντες οἱ σχετικοὶ κανόνες τοῦ Διεθνοῦς Δικαίου οἱ ἐφαρμοζόμενοι εἰς τὰς μεταξὺ τῶν συμβαλλομένων μερῶν σχέσεις.

4. Εἰδικὴ ἔννοια δύναται νὰ δοθῇ εἰς ἕνα ὅρον ἐὰν προκύπτῃ ὅτι αὐτὴ ἦτο ἡ πρόθεσις τῶν συμβαλλομένων μερῶν.

Ἄρθρον 32.

Συμπληρωματικὰ μέσα ἑρμηνείας.

Δύναται νὰ γίνῃ προσφυγὴ εἰς συμπληρωματικὰ μέσα ἑρμηνείας, περιλαμβανομένων τῶν προπαρασκευαστικῶν τῆς συνθήκης ἐργασιῶν καὶ τῶν περιστάσεων ὑφ' ἃς συνήφθη αὕτη, προκειμένου νὰ ἐπιβεβαιωθῇ ἡ ἔννοια ἡ προκύπτουσα ἐκ τῆς ἐφαρμογῆς τοῦ ἄρθρου 31 ἢ προκειμένου νὰ προσδιορισθῇ ἡ ἔννοια, ἐν περιπτώσει καθ' ἣν ἡ κατὰ τὸ ἄρθρον 31 ἑρμηνεία :

(α) Ἀφήνει τὴν ἔννοιαν ἀσαφῆ ἢ ἀφανῆ.

(β) Ὁδηγεῖ εἰς ἀποτέλεσμα, τὸ ὁποῖον τυγχάνει προδήλως ἄτοπον ἢ παράλογον.

Ἄρθρον 33.

Ἑρμηνεία συνθηκῶν ἐπιβεβαιουμένων εἰς δύο ἢ περισσοτέρας γλώσσας.

1. Ὅτε ἡ συνθήκη κατέστη αὐθεντικὴ εἰς δύο ἢ πλειονας γλώσσας, τὸ κείμενον ταύτης τυγχάνει ἐξ ἴσου αὐθεντικὸν εἰς οἱανδήποτε τῶν γλωσσῶν τούτων, ἐκτὸς ἐὰν ἡ συνθήκη ὁρίζῃ ἢ τὰ συμβαλλόμενα μέρη συμφωνοῦν, ὅτι ἐν περιπτώσει διϊσταμένων γνωμῶν ὡρισμένον κείμενον θὰ προέχῃ.

2. Κείμενον συνθήκης εἰς γλῶσσαν ἑτέραν ἐκείνων εἰς ἃς ἐπεβεβαιώθη θεωρεῖται αὐθεντικὸν κείμενον μόνον ἐὰν ἡ συνθήκη οὕτως ὁρίζῃ ἢ τὰ μέρη οὕτω συνεφώνησαν.

3. Οἱ ὅροι τῆς συνθήκης νοοῦνται ὡς ἔχοντες τὴν αὐτὴν ἔννοιαν εἰς ἕκαστον αὐθεντικὸν κείμενον.

4. Ἐξαιρέσει τῆς περιπτώσεως καθ' ἣν προέχει ὡρισμένον κείμενον, κατὰ τὴν ὡς ἄνω παράγραφον 1, ὁσάκις σύγκρισις τῶν αὐθεντικῶν κειμένων ἀποκαλύπτει διαφορὰν ἐννοίας, μὴ ἐκλείπουσαν ἐκ τῆς ἐφαρμογῆς τῶν ἄρθρων 31 καὶ 32, θὰ υἱοθετηθῇ ἡ ἔννοια ἥτις καλύτερον συμβιβάζει τὰ κείμενα, λαμβανομένου ὑπ' ὄψιν τοῦ ἀντικειμένου καὶ τοῦ σκοποῦ τῆς συνθήκης.

ΤΜΗΜΑ 4: ΣΥΝΘΗΚΑΙ ΚΑΙ ΤΡΙΤΑ ΚΡΑΤΗ

Ἄρθρον 34.

Γενικὸς κανὼν ἀφορῶν εἰς τὰ τρίτα κράτη.

Ἡ συνθήκη δὲν δημιουργεῖ ὑποχρεώσεις ἢ δικαιώματα διὰ τρίτον κράτος ἄνευ τῆς συναινέσεώς του.

Ἄρθρον 35.

Συνθῆκαι συνιστῶσαι ὑποχρεώσεις διὰ τρίτα κράτη.

Δημιουργεῖται ὑποχρέωσις διὰ τρίτον κράτος ἐκ διατάξεως συνθήκης ἐὰν αὕτη τυγχάνῃ ἡ πρόθεσις τῶν συμβαλλομένων μερῶν καὶ τὸ τρίτον κράτος ἀποδεχθῇ ταύτην ρητῶς καὶ ἐγγράφως.

Ἄρθρον 36.

Συνθῆκαι συνιστῶσαι δικαιώματα διὰ τρίτα κράτη.

1. Δημιουργεῖται δικαίωμα διὰ τρίτον κράτος ἐκ διατάξεως συνθήκης ἐὰν τὰ συμβαλλόμενα μέρη ἐπιδιώκουν διὰ ταύτης τὴν ἐκχώρησιν δικαιώματος εἰς τρίτον κράτος ἢ εἰς ὁμάδα κρατῶν εἰς τὴν ὁποίαν τοῦτο ἀνήκει ἢ εἰς ἅπαντα τὰ κράτη καὶ τὸ τρίτον τοιοῦτον συγκατίθεται. Ἡ συναίνεσις αὕτη τεκμαίρεται ἐφ' ὅσον δὲν ὑπάρχει ἔνδειξις περὶ τοῦ ἀντιθέτου, ἐκτὸς ἐὰν ἄλλως ὁρίζῃ ἡ συνθήκη.

2. Τὸ κράτος τὸ ὁποῖον ἀσκεῖ δικαίωμα κατ' ἐφαρμογὴν τῆς παραγράφου 1, προκειμένου νὰ ἀσκήσῃ τὸ δικαίωμα τοῦτο ὑποχρεοῦται νὰ σεβασθῇ τοὺς ὅρους οἵτινες προβλέπονται ἐν τῇ συνθήκῃ ἢ δημιουργοῦνται συμφώνως τῇ συνθήκῃ.

Ἄρθρον 37.

Ἀνάκλησις ἢ τροποποίησις ὑποχρεώσεων ἢ δικαιωμάτων τρίτων κρατῶν.

1. Ἐν περιπτώσει δημιουργίας ὑποχρεώσεως διὰ τρίτον κράτος, κατὰ τὸ ἄρθρον 35, αὕτη δύναται νὰ ἀνακληθῇ ἢ νὰ τροποποιηθῇ τῇ συναινέσει τῶν συμβαλλομένων ἐν τῇ συνθήκῃ μερῶν καὶ τοῦ τρίτου κράτους, ἐκτὸς ἐὰν προκύπτῃ ὅτι ταῦτα ἄλλως συνεφώνησαν.

2. Ἐν περιπτώσει δημιουργίας δικαιώματος διὰ τρίτον κράτος, κατὰ τὸ ἄρθρον 36, τοῦτο δὲν δύναται ν' ἀνακληθῇ ἢ νὰ τροποποιηθῇ ὑπὸ τῶν συμβαλλομένων μερῶν ἐὰν προκύπτῃ ὅτι συνεφωνήθη ὅπως τὸ δικαίωμα τοῦτο μὴ ὑπόκειται εἰς ἀνάκλησιν ἢ τροποποίησιν ἄνευ τῆς συναινέσεως τοῦ τρίτου κράτους.

Ἄρθρον 38.

Συμβατικοὶ κανόνες ὑποχρεοῦντες τρίτα κράτη ἐθιμικῶς.

Οὐδεμία διάταξις τῶν ἄρθρων 34 - 37 κωλύει κανόνα ἐξαγγελλόμενον εἰς συνθήκην ὅπως καταστῇ ὑποχρεωτικὸς διὰ τρίτον κράτος ὡς ἐθιμικὸς κανὼν τοῦ Διεθνοῦς Δικαίου ἀναγνωριζόμενος ὡς τοιοῦτος.

ΜΕΡΟΣ IV.

ΤΡΟΠΟΠΟΙΗΣΙΣ ΚΑΙ ΑΝΑΘΕΩΡΗΣΙΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 39.

Γενικὸς κανὼν τροποποιήσεως τῶν συνθηκῶν.

Ἡ συνθήκη δύναται νὰ τροποποιηθῇ κατόπιν συμφωνίας τῶν συμβαλλομένων μερῶν. Οἱ περιεχόμενοι εἰς τὸ Μέρος ΙΙ τῆς συμβάσεως κανόνες ἰσχύουν εἰς μίαν τοιαύτην συμφωνίαν ἐκτὸς ἐὰν ἄλλως ὁρίζῃ ἡ συνθήκη.

Ἄρθρον 40.

Τροποποίησις πολυμερῶν συνθηκῶν.

1. Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ ἡ τροποποίησις τῶν πολυμερῶν συνθηκῶν θὰ διέπεται ὑπὸ τῶν κατωτέρω πκραγράφων.

2. Πᾶσα πρότασις τροποποιήσεως πολυμεροῦς συνθήκης μεταξὺ ὅλων τῶν μερῶν δέον ὅπως κοινοποιῆται εἰς ἅπαντα τὰ συμβαλλόμενα μέρη, ἕκαστον τῶν ὁποίων δικαιοῦται νὰ συμμετέχῃ :

(α) Εἰς τὴν λῆψιν ἀποφάσεως ἐπὶ τῆς δοθησομένης εἰς τὴν πρότασιν ταύτην συνεχείας.

(β) Εἰς τὰς διαπραγματεύσεις καὶ συνομολόγησιν οἱασδήποτε συμφωνίας πρὸς τροποποίησιν τῆς συνθήκης.

3. Ἕκαστον κράτος δικαιούμενον ν' ἀποτελῇ μέρος εἰς συνθήκην δύναται ἐπίσης νὰ καταστῇ μέρος τῆς συνθήκης ὡς αὕτη τροποποιεῖται.

4. Τὸ σύμφωνον τροποποιήσεως δὲν δεσμεύει οἱονδήποτε κράτος τὸ ὁποῖον ἀποτελεῖ ἤδη μέρος τῆς συνθήκης καὶ δὲν καθίσταται μέρος τούτου. Ὡς πρὸς τὸ κράτος τοῦτο ἐφαρμόζεται ἡ παράγραφος 4 (β) τοῦ ἄρθρου 30.

5. Οἱονδήποτε κράτος τὸ ὁποῖον καθίσταται μέρος εἰς τὴν συνθήκην μετὰ τὴν θέσιν ἐν ἰσχύι τοῦ συμφώνου τροποποιήσεως καὶ δὲν ἐκφράζει διάφορον πρόθεσιν θεωρεῖται :

(α) μέρος τῆς συνθήκης ὡς αὕτη ἐτροποποιήθη,

(β) μέρος τῆς μὴ τροποποιηθείσης συνθήκης ἐν σχέσει πρὸς συμβαλλόμενον ἐν τῇ συνθήκῃ μέρος, μὴ δεσμευόμενον ὑπὸ τοῦ συμφώνου τροποποιήσεως.

Ἄρθρον 41.

Συμφωνίαι πρὸς ἀναθεώρησιν πολυμερῶν συνθηκῶν μεταξὺ ὡρισμένων μόνον ἐκ τῶν μερῶν ταύτης.

1. Δύο ἢ περισσότερα συμβαλλόμενα μέρη εἰς πολυμερῆ συνθήκην δύνανται νὰ συνομολογήσουν συμφωνίαν περὶ ἀναθεωρήσεως μεταξύ των τῆς πολυμεροῦς συνθήκης, ἐφ' ὅσον :

(α) ἡ δυνατότης τοιαύτης ἀναθεωρήσεως προβλέπεται ἐν τῇ συνθήκῃ,

(β) ἡ ἐν λόγῳ ἀναθεώρησις δὲν ἀπαγορεύεται ὑπὸ τῆς συνθήκης καί :

(ι) δὲν θίγει τὰ δικαιώματα ἅτινα ἔχουν τὰ ἀντισυμβαλλόμενα μέρη δυνάμει τῆς συνθήκης ἢ κατὰ τὴν ἄσκησιν τούτων,

(ιι) δὲν ἀναφέρεται εἰς διάταξιν, παρέκκλισις ἐκ τῆς ὁποίας τυγχάνει ἀσυμβίβαστος πρὸς τὴν ἀποτελεσματικὴν τήρησιν τοῦ ἀντικειμένου καὶ τοῦ σκοποῦ τῆς συνθήκης ἐν τῷ συνόλῳ ταύτης.

2. Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ, ὡς πρὸς τὴν διάταξιν τῆς παραγράφου 1 (α), τὰ ἐν λόγῳ συμβαλλόμενα μέρη δέον ὅπως γνωστοποιοῦν εἰς τοὺς ἀντισυμβαλλομένους τὴν πρόθεσίν των περὶ συνάψεως συμφωνίας καὶ περὶ τῆς ἀναθεωρήσεως εἰς τὴν ὁποίαν αὕτη ἀναφέρεται.

ΜΕΡΟΣ V.

ΑΚΥΡΟΤΗΣ, ΛΗΞΙΣ ΚΑΙ ΑΝΑΣΤΟΛΗ ΤΗΣ ΕΦΑΡΜΟΓΗΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

ΤΜΗΜΑ Ι: ΓΕΝΙΚΑΙ ΔΙΑΤΑΞΕΙΣ

Ἄρθρον 42.

Ἐγκυρότης καὶ τήρησις ἐν ἰσχύι τῶν συνθηκῶν.

1. Ἡ ἐγκυρότης συνθήκης ἢ τῆς συναινέσεως κράτους ὅπως δεσμευθῇ διὰ ταύτης δύναται νὰ ἀμφισβητηθοῦν μόνον κατ' ἐφαρμογὴν τῶν διατάξεων τῆς παρούσης συμβάσεως

2. Ἡ λῆξις συνθήκης, ἡ καταγγελία ταύτης ἢ ἡ ἀποχώρησις μέρους ἐξ αὐτῆς, δύνανται νὰ ἐπέλθουν μόνον κατ' ἐφαρμογὴν τῶν διατάξεων τῆς συνθήκης ἢ τῆς παρούσης συμβάσεως. Ὁ αὐτὸς κανὼν ἰσχύει καὶ διὰ τὴν ἀναστολὴν τῆς ἐφαρμογῆς τῆς συνθήκης.

Ἄρθρον 43.

Ὑποχρεώσεις ἐπιβαλλόμεναι ὑπὸ τοῦ Διεθνοῦς Δικαίου, ἀνεξαρτήτως τῆς συνθήκης.

Ἡ ἀκυρότης, ἡ λῆξις καὶ ἡ καταγγελία τῆς συνθήκης ἡ ἀποχώρησις μέρους ἐξ αὐτῆς καὶ ἡ ἀναστολὴ ἐφαρμογῆς ταύτης, πραγματοποιούμεναι δυνάμει τῶν διατάξεων τῆς συνθήκης ἢ τῆς παρούσης συμβάσεως, οὐδόλως θίγουν τὴν ὑποχρέωσιν τοῦ κράτους ὅπως ἐκπληροῖ οἱασδήποτε ὑποχρεώσεις διαλαμβανομένας ἐν συνθήκῃ, εἰς τὴν ὁποίαν κατὰ τὸ Διεθνὲς Δίκαιον θὰ ὑπήγετο τὸ κράτος, ἀνεξαρτήτως τῆς ἐν λόγῳ συνθήκης.

Ἄρθρον 44.

Διαχωρισμὸς διατάξεων συνθήκης.

1. Δικαίωμα κράτους, ἀπορρέον ἐκ τῆς συνθήκης, ἢ ἐκ τοῦ ἄρθρου 56 τῆς παρούσης συμβάσεως, ὅπως καταγγείλῃ, ἀποχωρήσῃ ἢ ἀναστείλῃ τὴν ἰσχὺν συνθήκης δύναται νὰ ἀσκηθῇ μόνον ἐν σχέσει πρὸς ὁλόκληρον τὴν συνθήκην ἐκτὸς ἐὰν ἄλλως αὐτη ὁρίζῃ ἢ τὰ μέρη ἄλλως συνεφώνησαν.

2. Δύναται νὰ γίνῃ ἐπίκλησις λόγου ἀκυρώσεως συνθήκης, λήξεως ταύτης, ἀποχωρήσεως μέρους ἐξ αὐτῆς, ἢ ἀναστολῆς ἐφαρμογῆς τῆς συνθήκης, ἀναγνωριζομένου ὑπὸ τῆς παρούσης συμβάσεως, μόνον ὡς πρὸς τὴν συνθήκην ἐν τῷ συνόλῳ ταύτης, ἐξαιρέσει τῶν περιπτώσεων αἵτινες ἀναφέρονται εἰς τὰς ἀκολούθως παραγράφους ἢ εἰς τὸ ἄρθρον 60.

3. Ἐν περιπτώσει καθ' ἣν ὁ ἐπικαλούμενος λόγος ἀναφέρεται μόνον εἰς ὡρισμένας διατάξεις δύναται νὰ γίνῃ ἐπίκλησις αὐτοῦ μόνον ὡς πρὸς τὰς διατάξεις ταύτας, ὁσάκις :

(α) αἱ ὡς ἄνω διατάξεις δύνανται νὰ διαχωρισθοῦν ἐκ τοῦ ὑπολοίπου τῆς συνθήκης ἀπὸ ἀπόψεως ἐφαρμογῆς των,

(β) προκύπτει ἐκ τῆς συνθήκης ἢ ἄλλως πως ὅτι ἡ ἀποδοχὴ τῶν διατάξεων τούτων δὲν ὑπῆρξεν οὐσιώδης βάσις τῆς συναινέσεως τοῦ ἑτέρου συμβαλλομένου μέρους ἢ τῶν συμβαλλομένων μερῶν ὅπως δεσμευθοῦν διὰ τῆς συνθήκης ἐν τῷ συνόλῳ ταύτης,

(γ) ἡ συνεχιζομένη ἐφαρμογὴ τοῦ ὑπολοίπου τῆς συνθήκης δὲν θὰ ἦτο ἄδικος.

4. Εἰς περιπτώσεις ἐμπιπτούσας εἰς τὰ ἄρθρα 49 καὶ 50 το κράτος τὸ ὁποῖον δικαιοῦται νὰ ἐπικαλεσθῇ ἀπάτην ἢ ἀπιστίαν δύναται νὰ πράξῃ τοῦτο εἴτε ἐν σχέσει πρὸς ὁλόκληρον τὴν συνθήκην εἴτε, συμφώνως τῇ ὡς ἄνω παραγράφῳ 3, ἐν σχέσει πρὸς ὡρισμένας διατάξεις ταύτης.

5. Διαχωρισμὸς τῶν διατάξεων τῆς συνθήκης δὲν ἐπιτρέπεται εἰς τὰς περιπτώσεις τῶν ἄρθρων 51, 52 καὶ 53.

Ἄρθρον 45.

Ἀπώλεια δικαιώματος ἐπικλήσεως λόγου ἀκυρώσεως, λήξεως, ἀποχωρήσεως ἢ ἀναστολῆς ἐφαρμογῆς συνθήκης.

Τὸ κράτος δὲν δύναται νὰ ἐπικαλεσθῇ λόγον ἀκυρώσεως, λήξεως, ἀποχωρήσεως ἢ ἀναστολῆς ἐφαρμογῆς συνθήκης κατὰ τὰ ἄρθρα 46–50 ἢ 60 καὶ 62, ἀφ' οὗ ἔλαβε γνῶσιν τῶν γεγονότων, ὁσάκις :

(α) ρητῶς συνεφώνησεν ὅτι ἡ συνθήκη εἶναι ἔγκυρος καὶ τελεῖ ἐν ἰσχύι· ἢ παραμένει ἐν ἐφαρμογῇ, ἀναλόγως τῆς περιστάσεως, ἢ

(β) ἐγένετο ἀποδεκτόν, ὡς ἐκ τῆς συμπεριφορᾶς του ὅτι ἡ συνθήκη εἶναι ἔγκυρος, ἐν ἰσχύι καὶ ἐν ἐφαρμογῇ, ἀναλόγως τῆς περιπτώσεως.

ΤΜΗΜΑ 2: ΑΚΥΡΟΤΗΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 46.

Διατάξεις ἐσωτερικοῦ δικαίου ἀναφερόμεναι εἰς τὴν ἁρμοδιότητα συνομολογήσεως συνθηκῶν.

1. Τὸ κράτος δὲν δύναται νὰ ἐπικαλεσθῇ τὸ γεγονός, ὅτι ἡ συναίνεσίς του ὅπως δεσμευθῇ διὰ συνθήκης ἐδόθη κατὰ παραβίασιν διατάξεως τοῦ ἐσωτερικοῦ του δικαίου, ἀναφερομένης εἰς τὴν ἁρμοδιότητα συνομολογήσεως συνθηκῶν καὶ ὡς ἐκ τούτου ἀκυρούσης τὴν συναίνεσίν του, ἐκτὸς ἐὰν ἡ παραβίασις αὕτη ἦτο ἔκδηλος καὶ ἀφεώρα κανόνα ἐσωτερικοῦ δικαίου θεμελιώδους σημασίας.

2. Ἡ παραβίασις εἶναι ἔκδηλος ἐφ' ὅσον τυγχάνει ἀντικειμενικῶς προφανὴς δι' οἱονδήποτε κράτος συμπεριφερόμενον ἐπὶ τοῦ προκειμένου κατὰ τὴν συνήθη πρακτικὴν καὶ καλῇ τῇ πίστει.

Ἄρθρον 47.

Εἰδικοὶ περιορισμοὶ εἰς τὴν ἁρμοδιότητα ἐκφράσεως τῆς συναινέσεως τοῦ κράτους.

Ὁσάκις ἐτέθη ὑπὸ εἰδικόν τινα περιορισμὸν ἡ ἁρμοδιότης τοῦ ἀντιπροσώπου πρὸς ἔκφρασιν τῆς συναινέσεως τοῦ κράτους ὅπως δεσμευθῇ διὰ συνθήκης τινος, ἡ ὑπ' αὐτοῦ, παράλειψις σεβασμοῦ τοῦ τεθέντος περιορισμοῦ δὲν δύναται νὰ ἐπιφέρῃ ἀκύρωσιν τῆς δοθείσης ὑπ' αὐτοῦ συναινέσεως παρὰ μόνον ἐὰν ὁ περιορισμὸς οὗτος ἐγνωστοποιήθη εἰς τὰ ἕτερα διαπραγματευόμενα κράτη πρὸ τῆς ὑπ' αὐτοῦ ἐκφράσεως τῆς τοιαύτης συναινέσεως.

Ἄρθρον 48.

Πλάνη.

1. Κράτος τι δύναται νὰ ἐπικαλεσθῇ πλάνην τινὰ εἰς συνθήκην ὡς ἀκυροῦσαν τὴν συναίνεσίν του ὅπως δεσμευθῇ διὰ ταύτης, ἐφ' ὅσον αὕτη ἀναφέρεται εἰς γεγονὸς ἢ κατάστασιν, τὴν ὁποίαν τὸ κράτος ἐξέλαβεν ὡς ὑφισταμένην κατὰ τὸν χρόνον τῆς συνομολογήσεως τῆς συνθήκης καὶ ἡ ὁποία ἀπετέλει οὐσιώδη βάσιν τῆς συναινέσεώς του ὅπως δεσμευθῇ συμβατικῶς.

2. Ἡ παράγραφος 1 δὲν ἐφαρμόζεται ἐὰν τὸ ἐν λόγῳ κράτος συνέβαλε διὰ τῆς συμπεριφορᾶς του εἰς τὴν πλάνην ἢ ἐὰν αἱ περιστάσεις ἦσαν τοιαῦται ὥστε νὰ ἔθετον τοῦτο ἐνώπιον τοῦ ἐνδεχομένου ὑπάρξεως λάθους.

3. Πλάνη ἀφορῶσα μόνον εἰς τὴν διατύπωσιν τοῦ κειμένου τῆς συνθήκης δὲν θίγει τὴν ἐγκυρότητα ταύτης. Ἐν προκειμένῳ τυγχάνει ἐφαρμογῆς τὸ ἄρθρον 79.

Ἄρθρον 49.

Ἀπάτη.

Ὁσάκις τὸ κράτος ἤχθη εἰς συνομολόγησιν συνθήκης συνεπείᾳ δολίας συμπεριφορᾶς ἑτέρου κράτους ἔχοντος συμμετάσχει εἰς τὰς διαπραγματεύσεις, τοῦτο δύναται νὰ ἐπικαλεσθῇ τὴν ἀπάτην ὡς ἀκυροῦσαν τὴν δοθεῖσαν συναίνεσίν του ὅπως δεσμευθῇ διὰ τῆς συνθήκης.

Ἄρθρον 50.

Δωροδοκία ἀντιπροσώπου κράτους.

Ὁσάκις ἐξησφαλίσθη ἡ ἔκφρασις τῆς συναινέσεως τοῦ κράτους ὅπως δεσμευθῇ συμβατικῶς διὰ δωροδοκίας τοῦ ἀντιπροσώπου του, ἀμέσως ἢ ἐμμέσως ἐπελθούσης δι' ἐνεργειῶν ἑτέρου κράτους ἔχοντος συμμετάσχει εἰς τὰς διαπραγματεύσεις, τοῦτο δύναται νὰ ἐπικαλεσθῇ τὴν δωροδοκίαν ὡς ἀκυροῦσαν τὴν συναίνεσίν του ὅπως δεσμευθῇ διὰ τῆς συνθήκης.

Ἄρθρον 51.

Ἄσκησις βίας ἐπὶ ἀντιπροσώπου τοῦ κράτους.

Στερεῖται οἱασδήποτε νομικῆς ἰσχύος ἡ ἔκφρασις τῆς συναινέσεως τοῦ κράτους ὅπως δεσμευθῇ διὰ συνθήκης ἐὰν αὕτη ἐξησφαλίσθη δι' ἀσκήσεως ἐναντίον τοῦ ἀντιπροσώπου του πράξεων ἢ ἀπειλῶν βίας.

Ἄρθρον 52.

Ἄσκησις βίας ἐπὶ τοῦ κράτους διὰ τῆς ἀπειλῆς ἢ χρήσεως βίας.

Ἡ συνθήκη εἶναι ἄκυρος ἐὰν ἡ σύναψίς της ἐπετεύχθη διὰ τῆς ἀπειλῆς ἢ χρήσεως βίας κατὰ παραβίασιν τῶν ἀρχῶν τοῦ Διεθνοῦς Δικαίου, ὡς περιέχονται αὗται ἐν τῷ Χάρτῃ τῶν Ἡνωμένων Ἐθνῶν.

Ἄρθρον 53.

Συνθῆκαι συγκρουόμεναι πρὸς ἀναγκαστικὸν κανόνα τοῦ γενικοῦ Διεθνοῦς Δικαίου.

Ἄκυρος εἶναι ἡ συνθήκη, ἐφ' ὅσον αὕτη κατὰ τὸν χρόνον τῆς συνομολογήσεώς της συγκρούεται πρὸς ἀναγκαστικὸν κανόνα τοῦ γενικοῦ Διεθνοῦς Δικαίου. Διὰ τοὺς σκοποὺς τῆς παρούσης συμβάσεως, ἀναγκαστικὸς κανὼν τοῦ γενικοῦ Διεθνοῦς Δικαίου εἶναι κανὼν δεκτὸς καὶ ἀνεγνωρισμένος ὑπὸ τῆς διεθνοῦς κοινότητος τῶν κρατῶν ἐν τῷ συνόλῳ της ὡς κανών, ἐκ τοῦ ὁποίου οὐδεμία παρέκκλισις ἐπιτρέπεται καὶ ὁ ὁποῖος δὲν δύναται νὰ τροποποιηθῇ εἰμὴ διὰ νέου, τοῦ αὐτοῦ χαρακτῆρος κανόνος τοῦ γενικοῦ Διεθνοῦς Δικαίου.

ΤΜΗΜΑ 3 : ΛΗΞΙΣ ΚΑΙ ΑΝΑΣΤΟΛΗ ΤΗΣ ΕΦΑΡΜΟΓΗΣ ΤΩΝ ΣΥΝΘΗΚΩΝ

Ἄρθρον 54.

Λῆξις ἢ καταγγελία συνθήκης δυνάμει τῶν διατάξεών της ἢ τῇ συναινέσει τῶν συμβαλλομένων μερῶν.

Ἡ λῆξις συνθήκης ἢ καταγγελία ταύτης δύνανται νὰ λάβουν χώραν :

(α) συμφώνως πρὸς τὰς διατάξεις τῆς συνθήκης, ἢ

(β) ἀνὰ πᾶσαν στιγμήν, διὰ τῆς συναινέσεως ὅλων τῶν μερῶν κατόπιν διαβουλεύσεων μετὰ τῶν ἄλλων συμβαλλομένων κρατῶν.

Ἄρθρον 55.

Ἐλάττωσις τῶν εἰς πολυμερῆ συνθήκην συμβαλλομένων μερῶν κάτω τοῦ ἀριθμοῦ τοῦ ἀναγκαίου διὰ τὴν θέσιν ταύτης ἐν ἰσχύι.

Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ, ἡ πολυμερὴς συνθήκη δὲν λήγει ἐκ μόνου τοῦ γεγονότος ὅτι ὁ ἀριθμὸς τῶν μερῶν ταύτης ἠλαττώθη κάτω τοῦ ἀπαραιτήτου διὰ τὴν θέσιν αὐτῆς ἐν ἰσχύι ἀριθμοῦ.

Ἄρθρον 56.

Καταγγελία ἢ ἀποχώρησις ἐκ συνθήκης μὴ περιλαμβανούσης διατάξεις ἀναφερομένας εἰς τὴν λῆξιν, καταγγελίαν ἢ ἀποχώρησιν.

1. Συνθήκη μὴ περιέχουσα διάταξιν ἀφορῶσαν εἰς τὴν λῆξιν καὶ μὴ προβλέπουσα τὴν καταγγελίαν ἢ ἀποχώρησιν ἐκ ταύτης δὲν δύναται νὰ καταγγελθῇ ἢ νὰ λυθῇ διὰ ἀποχωρήσεως ἐκτὸς ἐάν :

(α) ἀποδεικνύεται ὅτι τὰ συμβαλλόμενα μέρη εἶχον τὴν πρόθεσιν νὰ δεχθοῦν τὴν δυνατότητα καταγγελίας ἢ ἀποχωρήσεως ἐξ αὐτῆς,

(β) τὸ δικαίωμα καταγγελίας ἢ ἀποχωρήσεως ἐκ ταύτης συνάγεται ἐκ τῆς φύσεως τῆς συνθήκης.

2. Ἓν μέρος ὀφείλει νὰ γνωστοποιήσῃ οὐχὶ ἀργότερον τῶν 12 μηνῶν τὴν πρόθεσίν του, ὅπως, καταγγείλῃ συνθήκην ἢ ἀποχώρησῃ ἐξ αὐτῆς συμφώνως πρὸς τὴν παράγραφον 1.

Ἄρθρον 57.

Ἀναστολὴ τῆς ἐφαρμογῆς τῆς συνθήκης δυνάμει τῶν διατάξεων αὐτῆς ἢ τῇ συναινέσει τῶν συμβαλλομένων μερῶν.

Δύναται νὰ ἀνασταλῇ ἡ ἐφαρμογὴ τῆς συνθήκης ἐν σχέσει πρὸς ἅπαντα τὰ συμβαλλόμενα μέρη ἢ πρὸς ἓν καθοριζόμενον μέρος :

(α) συμφώνως πρὸς τὰς διατάξεις τῆς συνθήκης, ἢ

(β) ἀνὰ πᾶσαν στιγμὴν τῇ συναινέσει ἁπάντων τῶν συμβαλλομένων μερῶν κατόπιν διαβουλεύσεως μετὰ τῶν ἄλλων συμβαλλομένων κρατῶν.

Ἄρθρον 58.

Ἀναστολὴ ἐφαρμογῆς τῆς πολυμεροῦς συνθήκης συνεπείᾳ συμφωνίας ὡρισμένων μόνον ἐκ τῶν συμβαλλομένων μερῶν.

1. Δύο ἢ περισσότερα συμβαλλόμενα εἰς πολυμερῆ συνθήκην μέρη δύνανται νὰ συνομολογήσουν συμφωνίαν ἔχουσαν ὡς ἀντικείμενον τὴν προσωρινὴν καὶ μόνον μεταξὺ αὐτῶν ἀναστολὴν τῆς ἐφαρμογῆς τῶν διατάξεων τῆς συνθήκης, ὁσάκις :

(α) ἡ δυνατότης αὕτη ἀναστολῆς προβλέπεται ὑπὸ τῆς συνθήκης,

(β) ἡ ἐν λόγῳ ἀναστολὴ δὲν ἀπαγορεύεται ὑπὸ τῆς συνθήκης καί :

(ι) δὲν ἐπηρεάζει τὴν ἀπόλαυὴν ὑπὸ τῶν ἄλλων μερῶν τῶν δικαιωμάτων τῶν ἀπορρεόντων ἐκ τῆς συνθήκης, οὔτε τὴν ἐκτέλεσιν τῶν ὑποχρεώσεών των, καὶ

ιι) δὲν τυγχάνει ἀσυμβίβαστος πρὸς τὸ ἀντικείμενον καὶ τὸν σκοπὸν τῆς συνθήκης.

3. Ὁσάκις, κατὰ τὰς ἀνωτέρω παραγράφους, συμβαλλόμενον μέρος δύναται νὰ ἐπικαλεσθῇ θεμελιώδη μεταβολὴν τῶν περιστάσεων, ὡς λόγον λήξεως τῆς συνθήκης ἢ ἀποχωρήσεως ἐκ ταύτης, δύναται τοῦτο ὡσαύτως νὰ ἐπικαλεσθῇ τὴν ἀλλαγὴν ὡς λόγον ἀναστολῆς τῆς ἐφαρμογῆς τῆς συνθήκης.

Ἄρθρον 59.

Λῆξις ἢ ἀναστολὴ ἐφαρμογῆς τῆς συνθήκης συναγομένη ἐκ τῆς συνομολογήσεως μεταγενεστέρας συνθήκης.

1. Ἡ συνθήκη λογίζεται ὡς λήξασα εὐθὺς ὡς ἅπαντα τὰ μέρη εἰς τὴν συνθήκην συνάψουν μεταγενεστέρως συνθήκην ἐπὶ τοῦ αὐτοῦ ἀντικειμένου, καὶ ὁσάκις :

(α) προκύπτει ἐκ τῆς μεταγενεστέρως συνθήκης ἢ ἄλλως συνάγεται, ὅτι τὰ συμβαλλόμενα μέρη προὐτίθεντο ὅπως τὸ ἐν λόγῳ ἀντικείμενον διέπεται ὑπὸ τῆς συνθήκης ταύτης,

(β) αἱ διατάξεις τῆς μεταγενεστέρας συνθήκης τοσοῦτον δὲν συμβιβάζονται πρὸς τὰς ἀντιστοίχους τῆς προγενεστέρας τοιαύτης ὥστε αἱ δύο συνθῆκαι νὰ μὴ δύνανται νὰ ἐφαρμόζωνται ταὐτοχρόνως.

2. Ἡ προγενεστέρα συνθήκη θὰ θεωρῆται ὡς ἔχουσα μόνον ἀνασταλῆ ὁσάκις προκύπτει ἐκ τῆς μεταγενεστέρας τοιαύτης ἢ ἄλλως πως συνάγεται, ὅτι αὕτη ἦτο πρόθεσις τῶν μερῶν.

Ἄρθρον 60.

Λῆξις ἢ ἀναστολὴ ἐφαρμογῆς τῆς συνθήκης συνεπείᾳ παραβιάσεώς της.

1. Οὐσιώδης παραβίασις διμεροῦς συνθήκης ἐκ μέρους παρέχει τὸ δικαίωμα εἰς τὸν ἕτερον μέρος νὰ ἐπικαλεσθῇ τὴν παραβίασιν ταύτην ὡς λόγον λήξεως ἢ ἀναστολῆς ἐφαρμογῆς τῆς συνθήκης ἐν ὅλῳ ἢ ἐν μέρει.

2. Οὐσιώδης παραβίασις πολυμεροῦς συνθήκης ὑφ' ἑνὸς τῶν μερῶν παρέχει τὸ δικαίωμα :

(α) εἰς ἕτερα συμβαλλόμενα μέρη ὅπως κατόπιν ὁμοφώνου ἀποφάσεως ἀναστείλουν τὴν ἐφαρμογὴν τῆς συνθήκης ἐν ὅλῳ ἢ ἐν μέρει ἢ ὅπως τερματίσουν ταύτην :

(ι) εἴτε ὡς πρὸς τὰς σχέσεις μεταξὺ αὐτῶν τῶν ἰδίων καὶ τοῦ κράτους τοῦ παραβιάσαντος τὴν συνθήκην,

(ιι) εἴτε ὡς πρὸς ἅπαντα τὰ συμβαλλόμενα μέρη.

(β) εἰς τὸ μέρος, τὸ ὁποῖον εἰδικῶς ἐθίγη ἐκ τῆς παραβιάσεως ὅπως ἐπικαλεσθῇ ταύτην ὡς λόγον ἀναστολῆς ἐφαρμογῆς τῆς συνθήκης ἐν ὅλῳ ἢ ἐν μέρει εἰς τὰς σχέσεις του μετὰ τοῦ παραβιάσαντος τὴν συνθήκην κράτους,

(γ) εἰς οἱονδήποτε μέρος, ἕτερον τοῦ παραβιάσαντος τὴν συνθήκην κράτους, ὅπως ἐπικαλεσθῇ τὴν παραβίασιν ὡς λόγον ἀναστολῆς τῆς ἐφαρμογῆς τῆς συνθήκης ἐν ὅλῳ ἢ ἐν μέρει εἰς ὅ,τι τὸ ἀφορᾷ ἐὰν ἡ συνθήκη εἶναι φύσεως τοιαύτης ὥστε μία οὐσιώδης παραβίασις τῶν διατάξεών της ὑφ' ἑνὸς μέρους νὰ μεταβάλῃ ριζικῶς τὴν θέσιν ἑκάστου τῶν μερῶν ἀναφορικῶς πρὸς τὴν περαιτέρω ἐκτέλεσιν τῶν ὑποχρεώσεών των δυνάμει τῆς συνθήκης.

3. Διὰ τοὺς σκοποὺς τοῦ παρόντος ἄρθρου, οὐσιώδης παραβίασις τῆς συνθήκης τυγχάνει :

(α) ἀπόρριψις συνθήκης μὴ προβλεπομένη ὑπὸ τῆς παρούσης συμβάσεως, ἢ

(β) παραβίασις διατάξεως οὐσιώδους πρὸς πραγματοποίησιν τοῦ ἀντικειμένου ἢ τοῦ σκοποῦ τῆς συνθήκης.

4. Αἱ προηγούμεναι παράγραφοι δὲν θίγουν οὐδεμίαν διάταξιν τῆς συνθήκης ἐφαρμοζομένην ἐν περιπτώσει παραβιάσεως.

5. Αἱ παράγραφοι 1 ἕως 3 δὲν ἐφαρμόζονται εἰς τὰς διατάξεις τὰς ἀφορώσας εἰς τὴν προστασίαν τῆς ἀνθρωπίνης προσωπικότητος, αἱ ὁποῖαι περιέχονται εἰς συνθήκας ἀνθρωπιστικοῦ χαρακτῆρος, ἰδίᾳ εἰς διατάξεις ἀποκλειούσας ἀντίποινα πάσης μορφῆς κατὰ προσώπων προστατευομένων ὑπὸ τῶν εἰρημένων συνθηκῶν.

Ἄρθρον 61.

Ἐπισυμβᾶσα ἀδυναμία ἐκτελέσεως.

1. Ἓν μέρος εἰς συνθήκην δύναται νὰ ἐπικαλεσθῇ ἀδυναμίαν ἐκτελέσεως ὡς λόγον λήξεώς της ἢ ἀποχωρήσεως ἐκ ταύτης ἐὰν ἡ ἀδυναμία αὕτη εἶναι ἀποτέλεσμα ὁριστικῆς ἐξαλείψεως ἢ καταστροφῆς ἑνὸς ἀντικειμένου ἀπαραιτήτου πρὸς ἐκτέλεσιν τῆς συνθήκης. Ἐὰν ἡ ἀδυναμία αὕτη εἶναι προσωρινή, τὸ μέρος δύναται νὰ ἐπικαλεσθῇ ταύτην μόνον ὡς λόγον ἀναστολῆς ἐφαρμογῆς τῆς συνθήκης.

2. Τὸ συμβαλλόμενον εἰς συνθήκην μέρος δὲν δύναται νὰ ἐπικαλεσθῇ ἀδυναμίαν ἐκτελέσεως ὡς λόγον λήξεως ταύτης ἢ ἀποχωρήσεως ἐκ ταύτης ἢ ἀναστολῆς ἐφαρμογῆς της ἐὰν ἡ ἀδυναμία αὕτη ἀπορρέῃ ἐκ παραβιάσεως ὑπὸ τοῦ ἐπικαλουμένου ταύτην μέρους εἴτε ὑποχρεώσεως ἐκ τῆς συνθήκης εἴτε οἱασδήποτε ἑτέρας διεθνοῦς ὑποχρεώσεως ἔναντι οἱουδήποτε ἑτέρου μέρους τῆς συνθήκης.

Ἄρθρον 62.

Θεμελιώδης ἀλλαγὴ τῶν περιστάσεων.

1. Δὲν δύναται νὰ γίνῃ ἐπίκλησις θεμελιώδους ἀλλαγῆς τῶν περιστάσεων, ἡ ὁποία ἐσημειώθη ἐν σχέσει πρὸς τὰς ὑφισταμένας τοιαύτας κατὰ τὴν στιγμὴν τῆς συνομολογήσεως τῆς συνθήκης, αἵτινες δὲν εἶχον προβλεφθῇ ὑπὸ τῶν συμβαλλομένων, ὡς λόγος λήξεως τῆς συνθήκης ἢ ἀποχωρήσεως ἐκ ταύτης, ἐκτὸς ἐάν :

(α) ἡ ὕπαρξις τῶν περιστάσεων αὐτῶν συνίστα οὐσιώδη βάσιν τῆς συναινέσεως τῶν μερῶν ὅπως δεσμευθοῦν διὰ τῆς συνθήκης, καὶ

(β) ἀποτελέσματα τῆς ἀλλαγῆς ὑπῆρξεν ἡ ριζικὴ μεταβολὴ τῆς ἐκτάσεως τῶν ὑποχρεώσεων, αἱ ὁποῖαι ἀπομένουν πρὸς ἐκπλήρωσιν δυνάμει τῆς συνθήκης.

2. Δὲν δύναται νὰ γίνῃ ἐπίκλησις θεμελιώδους ἀλλαγῆς τῶν περιστάσεων ὡς λόγου λήξεως τῆς συνθήκης ἢ ἀποχωρήσεως ἐκ ταύτης :

(α) ὁσάκις ἡ συνθήκη καθορίζει μεθοριακὴν γραμμήν, ἢ

(β) ὁσάκις ἡ θεμελιώδης ἀλλαγὴ τῶν περιστάσεων εἶναι ἀποτέλεσμα παραβιάσεως ὑπὸ τοῦ ἐπικαλουμένου τὴν μεταβολὴν μέρους εἴτε ὑποχρεώσεως θεσπισθείσης ἐν τῇ συνθήκῃ εἴτε ἑτέρας διεθνοῦς ὑποχρεώσεως ἔναντι οἱουδήποτε ἑτέρου συμβαλλομένου εἰς τὴν συνθήκην μέρους.

Ἄρθρον 63.

Διακοπὴ διπλωματικῶν καὶ προξενικῶν σχέσεων.

Ἡ διακοπὴ τῶν διπλωματικῶν ἢ προξενικῶν σχέσεων μεταξὺ τῶν συμβαλλομένων εἰς συνθήκην μερῶν δὲν θίγει τὰς νομικὰς σχέσεις, αἱ ὁποῖαι ὑφίστανται μεταξύ των, δυνάμει τῆς συνθήκης, ἐκτὸς καὶ καθ' ὅ μέτρον ἡ ὕπαρξις τῶν διπλωματικῶν ἢ προξενικῶν σχέσεων τυγχάνει ἀπαραίτητος διὰ τὴν ἐφαρμογὴν τῆς συνθήκης.

Ἄρθρον 64.

Ἐμφάνισις νέου ἀναγκαστικοῦ κανόνος τοῦ γενικοῦ Διεθνοῦς Δικαίου (IUS COGENS).

Ἐὰν νέος ἀναγκαστικὸς κανὼν τοῦ γενικοῦ Διεθνοῦς Δικαίου ἤθελεν ἐμφανισθῇ πᾶσα ὑφισταμένη συνθήκη, συγκρουομένη πρὸς τὸν κανόνα τοῦτον, καθίσταται ἄκυρος καὶ τερματίζεται.

ΤΜΗΜΑ 4 : ΔΙΑΔΙΚΑΣΙΑ

Ἄρθρον 65.

Διαδικασία ἐφαρμοστέα ἐν σχέσει πρὸς τὴν ἀκυρότητα, ἢ λῆξιν συνθήκης ἀποχωρήσεως ἐκ ταύτης ἢ ἀναστολὴν ἐφαρμογῆς της.

1. Τὸ συμβαλλόμενον εἰς τὴν συνθήκην μέρος, τὸ ὁποῖον, βάσει τῶν διατάξεων τῆς παρούσης συμβάσεως, ἐπικαλεῖται εἴτε ἐλάττωμα τῆς συναινέσεώς του ὅπως δεσμευθῇ διὰ τῆς συνθήκης εἴτε καταγγέλλει τὴν ἰσχύν ταύτης, τερματίζει ταύτην, ἀποχωρεῖ ἐκ ταύτης ἢ ἀναστέλλει τὴν ἐφαρμογήν της ὀφείλει ὅπως γνωστοποιήσῃ τοῦτο εἰς τὰ ἕτερα μέρη. Ἡ γνωστοποίησις αὕτη δέον ὅπως ἀναφέρῃ τὰ προβλεφθησόμενα μέτρα ὡς πρὸς τὴν συνθήκην ὡς καὶ τοὺς λόγους λήψεως τούτων.

2. Ἐάν, μετὰ τὴν λῆξιν τῆς περιόδου, ἡ ὁποία πλὴν τῆς ἰδιαιτέρως ἐπειγούσης περιπτώσεως, δὲν θὰ ἔδει νὰ εἶναι μικροτέρα τῶν τριῶν μηνῶν ἀπὸ τῆς λήξεως τῆς γνωστοποιήσεως, οὐδὲν συμβαλλόμενον εἰς τὴν συνθήκην μέρος προβάλῃ ἀντίρρησιν, τὸ γνωστοποιοῦν μέρος δύναται νὰ λάβῃ τὰ προβλεφθέντα μέτρα συμφώνως τῷ ἄρθρῳ 67.

3. Ὁπωσδήποτε, ἐὰν ἠγέρθη ἀντίρρησις ὑφ' οἱουδήποτε ἑτέρου μέρους τῆς συνθήκης, τὰ μέρη θὰ ἐπιζητήσουν τὴν λύσιν τῆς διαφορᾶς κατὰ τὴν διαδικασίαν τὴν προβλεπομένην ὑπὸ τοῦ ἄρθρου 33 τοῦ Χάρτου τῶν Ἡνωμένων Ἐθνῶν.

4. Οὐδὲν ἐκ τῶν διαλαμβανομένων εἰς τὰς προηγουμένας παραγράφους θίγει τὰ δικαιώματα ἢ τὰς ὑποχρεώσεις τῶν μερῶν τὰς ἀπορρεούσας ἐξ οἱωνδήποτε δεσμευουσῶν ταῦτα διατάξεων ἐν ἰσχύι ὡς πρὸς τὸν διακανονισμὸν τῶν διαφορῶν.

5. Ἐπιφυλασσομένης τῆς περιπτώσεως τοῦ ἄρθρου 45, τὸ γεγονὸς ὅτι κράτος δὲν ἀπηύθυνε προηγουμένως τὴν προβλεπομένην ἐν παραγράφῳ 1 γνωστοποίησιν δὲν ἐμποδίζει τοῦτο ὅπως προβῇ εἰς τὴν γνωστοποίησιν ταύτην ὑπὸ μορφὴν ἀπαντήσεως εἰς ἕτερον μέρος τὸ ὁποῖον ἀπαιτεῖ τὴν ἐκτέλεσιν τῆς συνθήκης ἢ ἰσχυρίζεται ὅτι αὕτη παρεβιάσθη.

Ἄρθρον 66.

Διαδικασία δικαστικοῦ διακανονισμοῦ, διαιτησίας καὶ συνδιαλλαγῆς.

Ἐὰν δὲν κατέστη δυνατὴ ἡ ἐπίτευξις λύσεως συμφώνως πρὸς τὴν παράγραφον 3 τοῦ ἄρθρου 65, ἐντὸς τῶν δώδεκα μηνῶν μετὰ τὴν ἡμερομηνίαν καθ' ἣν ἠγέρθη ἡ ἀντίρρησις, αἱ ἀκόλουθοι διαδικασίαι θὰ ἐφαρμόζωνται :

(α) πᾶν μέρος εἰς διαφορὰν ἀφορῶσαν εἰς τὴν ἐφαρμογὴν ἢ εἰς τὴν ἑρμηνείαν τῶν ἄρθρων 53 ἢ 64 δύναται, διὰ προσφυ-

γῆς, νὰ τὴν ὑποβάλῃ εἰς τὸ Διεθνὲς Δικαστήριον πρὸς ἔκδοσιν ἀποφάσεως, πλὴν ἐὰν τὰ μέρη ἤθελον ἀποφασίσει κατόπιν κοινῆς συμφωνίας νὰ ὑποβάλλουν τὴν διαφορὰν εἰς διαιτησίαν,

(β) πᾶν μέρος εἰς διαφορὰν ἀφορῶσαν εἰς τὴν ἐφαρμογὴν ἢ εἰς τὴν ἑρμηνείαν οἱωνδήποτε ἑτέρων ἄρθρων τοῦ Μέρους V τῆς παρούσης συμβάσεως, δύναται νὰ θέσῃ εἰς ἐνέργειαν τὴν διαδικασίαν τὴν ἀναφερομένην εἰς τὸ Παράρτημα τῆς Συμβάσεως, ἀπευθύνον σχετικὴν αἴτησιν πρὸς τὸν Γενικὸν Γραμματέα τῶν Ἡνωμένων Ἐθνῶν.

Ἄρθρον 67.

Ἔγγραφα διὰ τῶν ὁποίων συνθῆκαι κηρύσσονται ἄκυροι, λήξασαι, ἀνίσχυροι ὡς πρὸς ἕν κράτος ἢ ἐν ἀναστολῇ ἐφαρμογῆς.

1. Ἡ προβλεπομένη ἐν παραγράφῳ 1 τοῦ ἄρθρου 65 γνωστοποίησις δέον ὅπως διατυποῦται ἐγγράφως.

2. Οἱαδήποτε πρᾶξις διὰ τῆς ὁποίας κηρύσσεται ἀκυρότης συνθήκης, ἡ λῆξις ταύτης, ἡ ἀποχώρησις ἐκ ταύτης ἢ ἡ ἀναστολὴ ἐφαρμογῆς ταύτης, ἐπὶ τῇ βάσει τῶν διατάξεων ταύτης ἢ τῶν παραγράφων 2 καὶ 3 τοῦ ἄρθρου 65 δέον ὅπως διενεργῆται δι' ἐγγράφου κοινοποιουμένου εἰς τὰ ἕτερα συμβαλλόμενα μέρη. Ἐὰν τὸ ἔγγραφον τοῦτο δὲν εἶναι ὑπογεγραμμένον ὑπὸ τοῦ Ἀρχηγοῦ τοῦ Κράτους, τοῦ Πρωθυπουργοῦ ἢ τοῦ Ὑπουργοῦ τῶν Ἐξωτερικῶν, ὁ ἀντιπρόπρόσωπος τοῦ κράτους, ὁ ὁποῖος κοινοποιεῖ τοῦτο δύναται νὰ κληθῇ νὰ προσαγάγῃ τὸ πληρεξούσιον ἔγγραφόν του.

Ἄρθρον 68.

Ἀνάκλησις γνωστοποιήσεων καὶ ἐγγράφων ἀναφερομένων εἰς τὰ ἄρθρα 65 καὶ 67.

Γνωστοποίησις ἢ ἔγγραφον προβλεπόμενον ὑπὸ τῶν ἄρθρων 65 καὶ 67 δύναται ν' ἀνακληθῇ ἀνὰ πᾶσαν στιγμὴν πρὶν ἢ δημιουργήσῃ ἀποτελέσματα.

ΤΜΗΜΑ 5 : ΣΥΝΕΠΕΙΑΙ ΤΗΣ ΑΚΥΡΩΣΕΩΣ, ΛΗΞΕΩΣ Ἢ ΑΝΑΣΤΟΛΗΣ ΕΦΑΡΜΟΓΗΣ ΤΗΣ ΣΥΝΘΗΚΗΣ

Ἄρθρον 69.

Συνέπειαι τῆς ἀκυρώσεως τῆς συνθήκης.

1. Ἡ συνθήκη τῆς ὁποίας ἡ ἀκυρότης προβλέπεται ὑπὸ τῆς παρούσης συμβάσεως εἶναι ἀνίσχυρος. Αἱ διατάξεις ἀκύρου συνθήκης δὲν ἔχουν νομικὴν ἰσχύν.

2. Ἐὰν κατ' ἐφαρμογὴν τῆς ὡς ἄνω συνθήκης ἔχουν ὁπωσδήποτε λάβει, χώραν πράξεις τινές :

(α) ἕκαστον συμβαλλόμενον μέρος δύναται νὰ ζητήσῃ ἐξ οἱουδήποτε ἀντισυμβαλλομένου νὰ δημιουργήσῃ κατὰ τὸ δυνατόν, εἰς τὰς ἀμοιβαίας αὐτῶν σχέσεις, τὴν κατάστασιν, ἥτις θὰ ὑφίστατο ἐὰν δὲν εἶχον συντελεσθῇ αἱ ὡς ἄνω πράξεις,

(β) πράξεις τελεσθεῖσαι καλῇ τῇ πίστει πρὸ τῆς ἐπικλήσεως τῆς ἀκυρότητος δὲν καθίστανται παράνομοι διὰ μόνον τὸν λόγον τῆς ἀκυρότητος τῆς συνθήκης.

3. Εἰς τὰς περιπτώσεις τῶν ἄρθρων 49, 50, 51 καὶ 52, ἡ παράγραφος 2 δὲν ἔχει ἐφαρμογὴν ὡς πρὸς τὸ συμβαλλόμενον μέρος τὸ ὁποῖον εὐθύνεται διὰ τὴν ἀπάτην, τὴν δωροδοκίαν ἢ τὴν βίαν.

4. Εἰς τὴν περίπτωσιν τῆς ἀκυρότητος τῆς συναινέσεως κράτους τινὸς ὅπως δεσμευθῇ διὰ πολυμεροῦς συνθήκης, οἱ ὕπερθεν κανόνες ἐφαρμόζονται εἰς τὰς σχέσεις μεταξὺ τοῦ εἰρημένου κράτους καὶ τῶν συμβαλλομένων εἰς τὴν συνθήκην μερῶν.

Ἄρθρον 70.

Συνέπειαι λήξεως τῆς συνθήκης.

1. Ἐξαιρέσει τῆς περιπτώσεως καθ' ἣν ἡ συνθήκη ἄλλως ὁρίζῃ ἢ καθ' ἣν τὰ συμβαλλόμενα μέρη ἄλλως συνεφώνησαν, ἡ λῆξις τῆς συνθήκης κατὰ τὰς διατάξεις αὐτῆς ἢ συμφώνως πρὸς τὴν παροῦσαν σύμβασιν :

(α) καθιστᾷ τὰ συμβαλλόμενα μέρη ἐλεύθερα πάσης ὑποχρεώσεως περαιτέρω ἐφαρμογῆς τῆς συνθήκης,

(β) δὲν ἐπιδρᾷ ἐπὶ οἱουδήποτε δικαιώματος, ὑποχρεώσεως ἢ νομικῆς καταστάσεως τῶν συμβαλλομένων, δημιουργηθείσης κατὰ τὴν ἐφαρμογὴν τῆς συνθήκης, πρὸ τῆς λήξεώς της.

2. Ἐὰν ἓν κράτος καταγγείλῃ πολυμερῆ συνθήκην ἢ ἀποχωρήσῃ ἐξ αὐτῆς, ἡ ὡς ἄνω παράγραφος 1 ἐφαρμόζεται εἰς τὰς σχέσεις μεταξὺ τοῦ κράτους τούτου καὶ ἑκάστου τῶν ἑτέρων συμβαλλομένων μερῶν ἀπὸ τῆς ἡμερομηνίας θέσεως ἐν ἰσχύι τῆς καταγγελίας ἢ ἀποχωρήσεως.

Ἄρθρον 71.

Συνέπειαι τῆς ἀκυρότητος τῆς συνθήκης, τῆς συγκρουομένης πρὸς ἀναγκαστικὸν κανόνα τοῦ γενικοῦ Διεθνοῦς Δικαίου.

1. Ἐν περιπτώσει συνθήκης ἀκύρου κατὰ τὸ ἄρθρον 53 τὰ συμβαλλόμενα μέρη ὑποχρεοῦνται νά :

(α) ἐξαλείψουν κατὰ τὸν δυνατὸν τὰς συνεπείας πάσης πράξεως, ἡ ὁποία ἔλαβε χώραν δυνάμει διατάξεως συγκρουομένης πρὸς ἀναγκαστικὸν κανόνα τοῦ γενικοῦ Διεθνοῦς Δικαίου, καὶ

(β) ἐναρμονίσουν τὰς ἀμοιβαίας αὐτῶν σχέσεις πρὸς τὸν ἀναγκαστικὸν κανόνα τοῦ γενικοῦ Διεθνοῦς Δικαίου.

2. Ἐν περιπτώσει συνθήκης καθισταμένης ἀκύρου καὶ ληγούσης κατὰ τὸ ἄρθρον 64, ἡ λῆξις τῆς συνθήκης :

(α) ἀπαλλάσσει τὰ συμβαλλόμενα μέρη πάσης ὑποχρεώσεως περαιτέρω ἐφαρμογῆς τῆς συνθήκης,

(β) δὲν θίγει οἱονδήποτε δικαίωμα, ὑποχρέωσιν ἢ νομικὴν κατάστασιν τῶν μερῶν, δημιουργηθεῖσαν κατὰ τὴν ἐκτέλεσιν τῆς συνθήκης καὶ πρὸ τῆς λήξεως ταύτης, ἐν τούτοις τὰ ὡς ἄνω δικαιώματα, ὑποχρεώσεις ἢ καταστάσεις δὲν δύνανται νὰ διατηρηθοῦν παρὰ μόνον καθ' ὅ μέτρον ἡ διατήρησίς των δὲν ἔρχεται εἰς σύγκρουσιν πρὸς τὸν νέον ἀναγκαστικὸν κανόνα τοῦ γενικοῦ Διεθνοῦς Δικαίου.

Ἄρθρον 72.

Συνέπειαι ἀναστολῆς ἐφαρμογῆς τῆς συνθήκης.

1. Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ ἢ τὰ μέρη ἄλλως συνεφώνησαν, ἡ ἀναστολὴ τῆς ἐφαρμογῆς τῆς συνθήκης ἐπὶ τῇ βάσει τῶν διατάξεων ταύτης ἢ συμφώνως πρὸς τὴν παροῦσαν σύμβασιν :

(α) ἀπαλλάσσει τὰ μέρη μεταξὺ τῶν ὁποίων ἀνεστάλη ἡ ἐφαρμογὴ τῆς συνθήκης τῆς ὑποχρεώσεως ὅπως ἐφαρμόσουν τὴν συνθήκην εἰς τὰς ἀμοιβαίας αὐτῶν σχέσεις κατὰ τὸν χρόνον τῆς ἀναστολῆς,

(β) δὲν ἐπηρεάζει ἄλλως τὰς νομικὰς σχέσεις μεταξὺ τῶν μερῶν τὰς δημιουργηθείσας ὑπὸ τῆς συνθήκης.

2. Κατὰ τὸν χρόνον τῆς ἀναστολῆς τὰ συμβαλλόμενα εἰς τὴν συνθήκην μέρη ὀφείλουν νὰ ἀπόσχουν πάσης ἐνεργείας, ἡ ὁποία παρεμποδίζει τὴν θέσιν ἐκ νέου τῆς συνθήκης ἐν ἰσχύι.

Ἄρθρον 73.

Περιπτώσεις διαδοχῆς κράτους, εὐθύνης κράτους καὶ ἐνάρξεως ἐχθροπραξιῶν.

Αἱ διατάξεις τῆς παρούσης συμβάσεως οὐδὲν ζήτημα προδικάζουν τὸ ὁποῖον θὰ ἠδύνατο νὰ ἀναφυῇ ἐν σχέσει πρὸς συνθήκην τινὰ συνεπείᾳ διαδοχῆς κρατῶν ἢ ἕνεκα τῆς διεθνοῦς εὐθύνης κράτους ἢ τῆς ἐνάρξεως ἐχθροπραξιῶν μεταξὺ κρατῶν.

Ἄρθρον 74.

Διπλωματικαὶ καὶ προξενικαὶ σχέσεις καὶ ἡ συνομολόγησις τῶν συνθηκῶν.

Ἡ διακοπὴ ἢ ἀνυπαρξία διπλωματικῶν ἢ προξενικῶν σχέσεων μεταξὺ δύο ἢ πλειόνων κρατῶν δὲν κωλύει τὴν συνομολόγησιν συνθηκῶν μεταξὺ τούτων. Ἡ συνομολόγησις συνθήκης αὐτὴ καθ' ἑαυτὴν δὲν ἐπηρεάζει τὰς διπλωματικὰς ἢ προξενικὰς σχέσεις.

Ἄρθρον 75.

Περίπτωσις ἐπιτιθεμένου κράτους.

Αἱ διατάξεις τῆς παρούσης συμβάσεως δὲν θίγουν οἱανδήποτε συμβατικὴν ὑποχρέωσιν προκύπτουσαν δι' ἓν ἐπιτιθέμενον κράτος συνεπείᾳ μέτρων λαμβανομένων συμφώνως πρὸς τὸν Χάρτην τῶν Ἡνωμένων Ἐθνῶν ἐν σχέσει πρὸς τὴν ἐπιθετικὴν ἐνέργειαν τοῦ κράτους τούτου.

ΜΕΡΟΣ VII

ΘΕΜΑΤΟΦΥΛΑΚΕΣ, ΚΟΙΝΟΠΟΙΗΣΕΙΣ, ΔΙΟΡΘΩΣΕΙΣ ΚΑΙ ΠΡΩΤΟΚΟΛΛΗΣΙΣ

Ἄρθρον 76.

Θεματοφύλακες συνθηκῶν.

1. Θεματοφύλακες συνθήκης δύνανται νὰ καθορίζωνται ὑπὸ τῶν συμμετεχόντων εἰς τὰς διαπραγματεύσεις κρατῶν, εἴτε ἐν αὐτῇ τῇ συνθήκῃ εἴτε καθ' οἱονδήποτε ἕτερον τρόπον. Ὁ θεματοφύλαξ δύναται νὰ εἶναι ἓν ἢ πλείονα κράτη, εἷς διεθνὴς ὀργανισμὸς ἢ ὁ ἀνώτερος διοικητικὸς λειτουργὸς τοιούτου ὀργανισμοῦ.

2. Αἱ ἁρμοδιότητες τοῦ θεματοφύλακος συνθήκης τυγχάνουν διεθνοῦς χαρακτῆρος καὶ ὁ θεματοφύλαξ ὑποχρεοῦται νὰ ἐκτελῇ τὰ καθήκοντά του ἀμερολήπτως. Εἰδικώτερον, τὸ γεγονός, ὅτι ἡ συνθήκη δὲν ἐτέθη ἐν ἰσχύι ὡς πρὸς ὡρισμένα ἐκ τῶν συμβαλλομένων μερῶν ἢ ὅτι ἐξεδηλώθη διαφορὰ μεταξὺ κράτους καὶ θεματοφύλακος ὡς πρὸς τὴν ὑπὸ τοῦ δευτέρου ἐνάσκησιν τῶν ἁρμοδιοτήτων του δὲν θίγει τὴν ὕπερθεν ὑποχρέωσιν.

Ἄρθρον 77.

Ἁρμοδιότητες Θεματοφυλάκων.

Ἐκτὸς ἐὰν ἡ συνθήκη ἄλλως ὁρίζῃ ἢ τὰ συμβαλλόμενα εἰς τὴν συνθήκην μέρη ἄλλως συνεφώνησαν, αἱ ἁρμοδιότητες τοῦ θεματοφύλακος εἶναι, κυρίως, αἱ ἑξῆς :

(α) ἡ φύλαξις τοῦ πρωτοτύπου τῆς συνθήκης καὶ τῶν πληρεξουσίων ἐγγράφων τῶν ἐπιδοθέντων εἰς τὸν θεματοφύλακα.

(β) ἡ ἔκδοσις κεκυρωμένων ἀντιγράφων τοῦ πρωτοτύπου τῆς συνθήκης καὶ οἱωνδήποτε ἑτέρων κειμένων συνθήκης εἰς ἑτέρας γλώσσας, ὡς προβλέπεται ὑπὸ τῆς συνθήκης καὶ ἡ διαβίβασις αὐτῶν εἰς τὰ συμβαλλόμενα μέρη καὶ εἰς τὰ κράτη τὰ δυνάμενα νὰ καταστοῦν συμβαλλόμενα μέρη.

(γ) ἡ μέριμνα διὰ τὴν ὑπογραφὴν τῆς συνθήκης καὶ τὴν λῆψιν ὡς καὶ τὴν φύλαξιν ὅλων τῶν ἐγγράφων, γνωστοποιήσεων καὶ κοινοποιήσεων ἐν σχέσει πρὸς τὴν συνθήκην.

(δ) ἡ ἐξέτασις κατὰ πόσον ἡ ὑπογραφή, τὸ ἔγγραφον, ἡ γνωστοποίησις ἢ κοινοποίησις ἐν σχέσει πρὸς τὴν συνθήκην διενεργοῦνται δεόντως καὶ ἡ θέσις, ἐν περιπτώσει ἀνάγκης, τοῦ προκύπτοντος ζητήματος ὑπ' ὄψιν τοῦ ἐνδιαφερομένου κράτους.

(ε) ἡ ἐνημέρωσις τῶν συμβαλλομένων μερῶν ὡς καὶ τῶν κρατῶν τῶν δικαιουμένων νὰ καταστοῦν μέρη περὶ τῶν πράξεων, γνωστοποιήσεων καὶ κοινοποιήσεων ἐν σχέσει πρὸς τὴν συνθήκην.

(στ) ἡ ἐνημέρωσις τῶν κρατῶν, τὰ ὁποῖα δικαιοῦνται νὰ καταστοῦν συμβαλλόμενα μέρη περὶ τῆς ἡμερομηνίας κατὰ τὴν ὁποίαν συνεπληρώθη ὁ ἀριθμὸς τῶν ὑπογραφῶν ἢ τῶν ἐγγράφων ἐπικυρώσεως, ἀποδοχῆς, ἐγκρίσεως ἢ προσχωρήσεως, ὁ ὁποῖος ἀπαιτεῖται διὰ τὴν θέσιν ἐν ἰσχύι τῆς συνθήκης.

(ζ) ἡ πρωτοκόλλησις τῆς συνθήκης παρὰ τῇ Γραμματείᾳ τῶν Ἡνωμένων Ἐθνῶν.

(η) ἡ ἐκτέλεσις τῶν ἁρμοδιοτήτων αἱ ὁποῖαι προσδιορίζονται εἰς ἑτέρας διατάξεις τῆς παρούσης συμβάσεως.

2. Ἐν περιπτώσει ἀναφυομένης διαφορᾶς μεταξὺ κράτους καὶ θεματοφύλακος ἐν σχέσει πρὸς τὴν ὑπὸ τοῦ τελευταίου ἐκτέλεσιν τῶν ἁρμοδιοτήτων του ὁ θεματοφύλαξ ὀφείλει νὰ θέτῃ τὸ ζήτημα ὑπ' ὄψιν τῶν ὑπογραψάντων τὴν συνθήκην καὶ τῶν συμβαλλομένων κρατῶν ἢ ἐν ἀνάγκῃ ὑπ' ὄψιν τοῦ ἁρμοδίου ὀργάνου τοῦ ἐνδιαφερομένου διεθνοῦς ὀργανισμοῦ.

Ἄρθρον 78.

Γνωστοποιήσεις καὶ κοινοποιήσεις.

Ἐκτὸς ἐὰν ἡ συνθήκη ἢ ἡ παροῦσα σύμβασις ἄλλως ὁρίζῃ, πᾶσα γνωστοποίησις ἢ κοινοποίησις μέλλουσα νὰ γίνῃ ὑπὸ κράτους, κατὰ τὰς διατάξεις τῆς παρούσης συμβάσεως :

(α) ἐλλείψει θεματοφύλακος, θὰ διεβιβάζετο ἀπ' εὐθείας εἰς τὰ κράτη πρὸς τὰ ὁποῖα ἀπευθύνεται, καὶ εἰς τὸν θεματοφύλακα ἐν περιπτώσει ὑπάρξεως τούτου.

(β) θὰ θεωρῆται ὡς γενομένη ὑπὸ τοῦ ἐν λόγῳ κράτους μόνον ἐφ' ὅσον παρελήφθη ὑπὸ τοῦ κράτους εἰς τὸ ὁποῖον διεβιβάσθη, ἢ ἀναλόγως τῆς περιπτώσεως, ἐφ' ὅσον παρελήφθη ὑπὸ τοῦ θεματοφύλακος.

(γ) ἐν περιπτώσει διαβιβάσεώς της εἰς τὸν θεματοφύλακα, θὰ θεωρῆται ὡς παραληφθεῖσα ὑπὸ τοῦ κράτους πρὸς τὸ ὁποῖον ἀπευθύνεται μόνον ἀφ' ἧς τοῦτο εἰδοποιηθῇ ὑπὸ τοῦ θεματοφύλακος συμφώνως τῇ παραγράφῳ 1 (ε) τοῦ ἄρθρου 77.

Ἄρθρον 79.

Διόρθωσις λαθῶν κειμένων ἢ κεκυρωμένων ἀντιγράφων συνθήκης.

1. Ἐὰν μετὰ τὴν πιστοποίησιν τῆς αὐθεντικότητος τοῦ κειμένου συνθήκης τινός, τὰ ὑπογράφοντα Κράτη, διαπιστοῦν διὰ κοινῆς συμφωνίας ὅτι τὸ κείμενον τοῦτο περιέχει λάθος τι τοῦτο διορθοῦται δι' ἑνὸς τῶν κατωτέρω τρόπων ἐκτὸς ἐὰν τὰ προμνησθέντα Κράτη, ἀποφασίσουν περὶ ἑτέρου τρόπου διορθώσεως.

α) διόρθωσις τοῦ κειμένου κατὰ τὸν κατάλληλον τρόπον καὶ μονογραφὴ τῆς διορθώσεως ὑπὸ τῶν ἀντιπροσώπων δεόντως ἐξουσιοδοτημένων.

β) κατάρτισις ἐγγράφου ἢ ἀνταλλαγὴ ἐγγράφων ἐντὸς τῶν ὁποίων καταχωρεῖται ἡ διόρθωσις ἥτις συνεφωνήθη νὰ ἐπηνεχθῇ εἰς τὸ κείμενον.

γ) κατάρτισις διωρθωμένου κειμένου τοῦ συνόλου τῆς Συνθήκης, συμφώνως, πρὸς τὴν διαδικασίαν τὴν χρησιμοποιηθεῖσαν διὰ τὸ χρονικὸν κείμενον.

2. Ὁσάκις πρόκειται περὶ συνθήκης διὰ τὴν ὁποίαν ὑφίσταται θεματοφύλαξ, οὗτος γνωστοποιεῖ εἰς τὰ ὑπογράφοντα Κράτη καὶ εἰς τὰ συμβαλλόμενα Κράτη τὸ λάθος καὶ τὴν πρότασιν διορθώσεώς του καὶ ἐξειδικεύει κατάλληλον προθεσμίαν ἐντὸς τῆς ὁποίας δύναται νὰ διατυπωθῇ ἀντίρρησις ὡς πρὸς τὴν προτεινομένην διόρθωσιν. Ἐάν, κατὰ τὴν ἐκπνοὴν τῆς προθεσμίας:

α) οὐδεμία ἀντίρρησις ἤθελε διατυπωθῇ, ὁ θεματοφύλαξ πραγματοποιεῖ καὶ μονογραφεῖ τὴν διόρθωσιν ἐν τῷ κειμένῳ συντάσσει πρακτικὸν διορθώσεως τοῦ κειμένου καὶ κοινοποιεῖ ἀντίγραφον τούτου εἰς τὰ ἐν τῇ συνθήκῃ μέρη καὶ εἰς τὰ Κράτη τὰ δυνάμενα νὰ καταστοῦν συμβαλλόμενα μέρη.

β) ἀντίρρησις ἤθελε διατυπωθῇ, ὁ θεματοφύλαξ γνωστοποιεῖ τὴν ἀντίρρησιν, εἰς τὰ ὑπογράφοντα ἢ τὰ συμβαλλόμενα Κράτη.

3. Οἱ κανόνες οἱ περιεχόμενοι εἰς τὰς παραγράφους 1 καὶ 2 ἐφαρμόζονται ὡσαύτως ὁσάκις τὸ κείμενον ἐπιστοποιήθη αὐθεντικὸν εἰς δύο ἢ περισσοτέας γλώσσας καὶ ἀναφαίνεται ἔλλειψις παραλληλισμοῦ ἡ ὁποία κατὰ τὴν συμφωνίαν τῶν ὑπογραφόντων καὶ συμβαλλομένων Κρατῶν δέον νὰ διορθωθῇ.

4. Τὸ διωρθωμένον κείμενον ἀντικαθιστᾷ ἐξ ὑπαρχῆς (AT INITIO) τὸ ἡμαρτημένον κείμενον, ἐκτὸς ἐὰν τὰ ὑπογράφοντα καὶ συμβαλλόμενα Κράτη δὲν ἀποφασίσουν ἄλλως.

5. Ἡ διόρθωσις τοῦ κειμένου Συνθήκης τινὸς πρωτοκολληθείσης ἤδη, θὰ γνωστοποιῆται εἰς τὴν Γραμματείαν τοῦ Ὀργανισμοῦ τῶν Ἡνωμένων Ἐθνῶν.

6. Ὅσάκις λάθος ἀποκαλύπτεται εἰς ἀντίγραφον Συνθήκης τινός, βεβαιωθὲν ἀκριβὲς ὁ θεματοφύλαξ συντάσσει πρακτικὸν διορθώσεως καὶ ἀποστέλλει ἀντίγραφον εἰς τὰ ὑπογράφοντα καὶ εἰς τὰ συμβαλλόμενα Κράτη.

Ἄρθρον 80.

Πρωτοκόλλησις καὶ δημοσίευσις τῶν συνθηκῶν.

1. Αἱ συνθῆκαι μετὰ τὴν θέσιν των ἐν ἰσχύι δέον νὰ διαβιβάζωνται πρὸς τὸν Γενικὸν Γραμματέα τῶν Ἡνωμένων Ἐθνῶν πρὸς πρωτοκόλλησιν ἢ ἀρχειοθέτησιν καὶ ἐγγραφὴν ἐν τῷ εὑρετηρίῳ, ἀναλόγως τῆς περιπτώσεως, καὶ πρὸς δημοσίευσιν.

2. Ὁ καθορισμὸς τοῦ θεματοφύλακος ἀποτελεῖ καὶ ἐξουσιοδότησίν του ὅπως διενεργῇ τὰς ἀναφερομένας, εἰς τὴν προηγουμένην παράγραφον πράξεις.

ΜΕΡΟΣ VIII.

ΤΕΛΙΚΑΙ ΔΙΑΤΑΞΕΙΣ

Ἄρθρον 81.

Ὑπογραφή.

Ἡ παροῦσα σύμβασις θὰ εἶναι ἀνοικτὴ πρὸς ὑπογραφὴν ὑπὸ πάντων τῶν κρατῶν-μελῶν τῶν Ἡνωμένων Ἐθνῶν ἢ οἱουδήποτε Εἰδικευμένου Ὀργανισμοῦ, ἢ τῆς Διεθνοῦς Ὀργανώσεως Ἀτομικῆς Ἐνεργείας ἢ οἱουδήποτε κράτους-μέλους ἐν τῷ Καταστατικῷ τοῦ Διεθνοῦς Δικαστηρίου καὶ παντὸς ἑτέρου κράτους προσκαλουμένου ὑπὸ τῆς Γενικῆς Συνελεύσεως τῶν Ἡνωμένων Ἐθνῶν ὅπως καταστῇ συμβαλλόμενον μέρος εἰς τὴν σύμβασιν κατὰ τὸν ἀκόλουθον τρόπον.

Μέχρι τῆς 30 Νοεμβρίου 1969 εἰς τὸ Ὁμοσπονδιακὸν Ὑπουργεῖον τῶν Ἐξωτερικῶν τῆς Αὐστρίας καὶ μετὰ ταῦτα, μέχρι τῆς 30 Ἀπριλίου 1970 εἰς τὴν ἕδραν τῶν Ἡνωμένων Ἐθνῶν ἐν Νέᾳ Ὑόρκῃ.

Ἄρθρον 82.

Ἐπικύρωσις.

Ἡ παροῦσα σύμβασις θέλει ἐπικυρωθῆ. Τὰ ἔγγραφα ἐπικυρώσεως θὰ κατατεθοῦν παρὰ τῷ Γενικῷ Γραμματεῖ τῶν Ἡνωμένων Ἐθνῶν.

Ἄρθρον 83.

Προσχώρησις.

Ἡ παροῦσα σύμβασις θὰ παραμείνῃ ἀνοικτὴ εἰς τὴν προσχώρησιν οἱουδήποτε κράτους ἀνήκοντος εἰς μίαν τῶν μνημονευομένων ἐν τῷ ἄρθρῳ 81 κατηγοριῶν, τὰ ἔγγραφα προσχωρήσεως θὰ κατατεθοῦν παρὰ τῷ Γενικῷ Γραμματεῖ τῶν Ἡνωμένων Ἐθνῶν.

Ἄρθρον 84.

Θέσις ἐν ἰσχύι.

1. Ἡ παροῦσα σύμβασις θὰ τεθῇ ἐν ἰσχύι τὴν 30ὴν ἡμέραν ἀπὸ τῆς ἡμερομηνίας καταθέσεως τοῦ 35ου ἐγγράφου ἐπικυρώσεως ἢ προσχωρήσεως.

2. Δι' ἕκαστον τῶν κρατῶν, ἅτινα θὰ ἐπικυρώσουν τὴν σύμβασιν ἢ θὰ προσχωρήσουν εἰς αὐτὴν μετὰ τὴν κατάθεσιν τοῦ 35ου ἐγγράφου ἐπικυρώσεως ἢ προσχωρήσεως, ἡ σύμβασις θὰ τεθῇ ἐν ἰσχύι τὴν 30ὴν ἡμέραν ἀπὸ τῆς καταθέσεως ὑπὸ τοῦ κράτους τούτου τοῦ ἐγγράφου ἐπικυρώσεως ἢ προσχωρήσεώς του.

Ἄρθρον 85.

Αὐθεντικὰ κείμενα.

Τὸ πρωτότυπον τῆς παρούσης συμβάσεως, τοῦ ὁποίου τὰ κείμενα κινεζικόν, ἀγγλικόν, γαλλικόν, καὶ ρωσικὸν εἶναι ἐξ ἴσου αὐθεντικά, θὰ κατατεθῇ παρὰ τῷ Γενικῷ Γραμματεῖ τῶν Ἡνωμένων Ἐθνῶν.

Εἰς πίστωσιν τούτου οἱ ὑπογραφόμενοι πληρεξούσιοι, δεόντως ἐξουσιοδοτημένοι ὑπὸ τῶν ἀντιστοίχων Κυβερνήσεών των ὑπέγραψαν τὴν παροῦσαν σύμβασιν.

Ἐγένετο ἐν Βιέννῃ τῇ 23ῃ Μαΐου 1969.

ΠΑΡΑΡΤΗΜΑ

1. Ὑπὸ τοῦ Γενικοῦ Γραμματέως τῶν Ἡνωμένων Ἐθνῶν πρόκειται νὰ συνταχθῇ καὶ νὰ τηρῆται κατάλογος μεσολαβητῶν ἀποτελούμενος ἐκ νομικῶν ἐχόντων τὰ νομικὰ προσόντα. Πρὸς τὸν σκοπὸν τοῦτον, ἕκαστον Κράτος , μέλος τῶν Ἡνωμένων Ἐθνῶν ἢ συμβεβλημένον εἰς τὴν παροῦσαν Σύμβασιν θὰ προσκληθῇ ὅπως ὁρίσῃ δύο μεσολαβητάς, καὶ τὰ ὀνόματα τῶν οὕτω ὑποδειχθησομένων προσώπων θὰ ἀποτελοῦν τὸν κατάλογον. Ἡ θητεία τοῦ μεσολαβητοῦ, συμπεριλαμβανομένου παντὸς μεσολαβητοῦ ὁριζομένου πρὸς πλήρωσιν κενῆς τινὸς θέσεως θὰ εἶναι πενταετὴς καὶ θὰ δύναται νὰ ἀνανεωθῇ. Ὁ μεσολαβητὴς τοῦ ὁποίου λήγει ἡ θητεία θὰ ἐξακολουθήσῃ νὰ ἐκπληροῖ πᾶν λειτούργημα ὅπερ τοῦ ἀνετέθη δυνάμει τῆς ἀκολούθου παραγράφου.

2. Ὅσάκις ὑποβάλλεται αἴτησις πρὸς τὸν Γενικὸν Γραμματέα δυνάμει τοῦ ἄρθρου 66, οὗτος θὰ ὑποβάλῃ τὴν διαφορὰν ἐνώπιον ἐπιτροπῆς συμβιβασμοῦ (μεσολαβητῶν) ἀποτελουμένης ἐκ τῶν ἑξῆς :

Τὸ Κράτος ἢ τὰ Κράτη τὰ συνιστῶντα ἓν ἐκ τῶν μερῶν εἰς τὴν διαφορὰν θὰ διορίζῃ :

α) ἕνα μεσολαβητὴν ἐκ τῆς ἐθνικότητος τῆς χώρας ταύτης ἢ τῶν χωρῶν αἵτινες δύνανται ἢ μὴ νὰ ἐκλεγοῦν ἐκ τοῦ καταλόγου τοῦ ἀναφερομένου εἰς τὴν παράγραφον 1, καὶ

β) ἕνα μεσολαβητὴν μὴ ἀνήκοντα εἰς τὴν ἐθνικότητα τοῦ ἐν λόγῳ Κράτους ἢ ἑξ οἱωνδήποτε ἐκ τῶν Κρατῶν αὐτῶν, ὅστις θὰ ἐκλεγῇ ἐκ τοῦ καταλόγου.

Τὸ κράτος ἢ τὰ κράτη τὰ ἀποτελοῦντα τὸν ἕτερον διάδικον εἰς τὴν διαφορὰν θὰ διορίσουν δύο μεσολαβητὰς κατὰ τὸν αὐτὸν τρόπον. Οἱ τέσσαρες μεσολαβηταὶ οἱ ἐκλεγέντες ὑπὸ τῶν μερῶν θὰ διορισθοῦν ἐντὸς ἑξήκοντα ἡμερῶν ἀπὸ τῆς ἡμερομηνίας παραλαβῆς τῆς αἰτήσεως ὑπὸ τοῦ Γενικοῦ Γραμματέως.

Οἱ τέσσαρες μεσολαβηταὶ ἐντὸς ἑξήκοντα ἡμερῶν ἀπὸ τῆς ἡμερομηνίας τοῦ τελευταίου διορισμοῦ τούτων, θὰ ὁρίσουν πέμπτον μεσολαβητὴν ἐκλεγόμενον ἐκ τοῦ καταλόγου, ὡς Πρόεδρον.

Ἐὰν ὁ διορισμὸς τοῦ Προέδρου ἢ οἱουδήποτε ἐκ τῶν λοιπῶν μεσολαβητῶν δὲν ἐγένετο ἐντὸς τῆς ἀνωτέρω ἡμερομηνίας τοῦ ἐν λόγῳ διορισμοῦ, οὗτος θὰ γίνεται ὑπὸ τοῦ Γενικοῦ Γραμματέως ἐντὸς ἑξήκοντα ἡμερῶν ἀπὸ τῆς ἡμερομηνίας λήξεως τῆς περιόδου ταύτης. Ὁ διορισμὸς τοῦ προέδρου δύναται νὰ γίνῃ ὑπὸ τοῦ Γενικοῦ Γραμματέως εἴτε ἐκ τοῦ καταλόγου εἴτε ἐκ τῶν μελῶν τῆς Ἐπιτροπῆς Διεθνοῦς Δικαίου. Πᾶσαι αἱ προθεσμίαι ἐντὸς τῶν ὁποίων δύνανται νὰ γίνουν οἱ διορισμοὶ δύνανται νὰ παραταθοῦν διὰ συμφωνίας μεταξὺ τῶν μερῶν εἰς ἃ ἀφορᾷ ἡ διαφορά.

Πᾶσα κενουμένη θέσις θὰ πληροῦται κατὰ τὸν διὰ τὸν διορισμὸν καθοριζόμενον τρόπον.

3. Ἡ Ἐπιτροπὴ Μεσολαβήσεως θὰ ἀποφασίζῃ περὶ τῆς διαδικασίας ἣν θὰ τηρήσῃ. Ἡ Ἐπιτροπὴ τῇ συναινέσει τῶν μερῶν εἰς ἃ ἀφορᾷ ἡ διαφορά, δύναται νὰ καλέσῃ οἱονδήποτε συμβαλλόμενον μέρος τῆς συνθήκης ὅπως ὑποβάλῃ τὰς ἀπόψεις του προφορικῶς ἢ ἐγγράφως. Αἱ ἀποφάσεις καὶ αἱ Εἰσηγήσεις τῆς Ἐπιτροπῆς θὰ λαμβάνωνται διὰ ψήφου τῆς πλειοψηφίας τῶν πέντε μελῶν.

4. Ἡ Ἐπιτροπὴ δύναται νὰ ἐπιστήσῃ τὴν προσοχὴν τῶν μερῶν τῆς διαφορᾶς εἰς οἱαδήποτε μέτρα τὰ ὁποῖα ἐνδέχεται νὰ διευκολύνουν τὴν φιλικὴν διευθέτησιν τῆς διαφορᾶς.

5. Ἡ Ἐπιτροπὴ θὰ ἀκούσῃ τοὺς διαδίκους, θὰ ἐξετάσῃ τὰς ἀξιώσεις καὶ τὰς ἐνστάσεις καὶ θὰ εἰσηγηθῇ προτάσεις πρὸς τοὺς διαδίκους μὲ τὴν προοπτικὴν ἐπιτεύξεως διευθετήσεως τῆς διαφορᾶς.

6. Ἡ Ἐπιτροπὴ θὰ ἀναφέρῃ ἐντὸς δώδεκα ἡμερῶν περὶ τῆς συγκροτήσεώς της. Ἡ ἔκθεσίς της θὰ κατατεθῇ εἰς τὸν Γενικὸν - Γραμματέα καὶ θὰ διαβιβασθῇ εἰς τὰ μέρη τῆς ἐν προκειμένῳ διαφορᾶς. Ἡ ἔκθεσις τῆς Ἐπιτροπῆς, περιλαμβάνουσα, πᾶν συμπέρασμα ἀναφερόμενον ἐν αὐτῇ, ἀφορῶν τὰ πραγματικὰ περιστατικὰ ἢ τὰ νομικὰ ζητήματα, δὲν θὰ δεσμεύῃ τὰ μέρη καὶ θὰ ἔχῃ χαρακτῆρα συστάσεων, ὑποβαλλομένων πρὸς ἐξέτασιν ὑπὸ τῶν μερῶν ἐπὶ τῷ τέλει φιλικοῦ διακανονισμοῦ τῆς διαφορᾶς.

7. Ὁ Γενικὸς Γραμματεὺς θὰ παράσχῃ εἰς τὴν Ἐπιτροπὴν πᾶσαν βοήθειαν καὶ διευκόλυνσιν ἥτις ἐνδεχομένως θὰ ἀπαιτῆται. Τὰ ἔξοδα τῆς Ἐπιτροπῆς θὰ βαρύνουν τὰ Ἡνωμένα Ἔθνη.

Ἄρθρον Δεύτερον.

Ἡ ἰσχὺς τῶν διὰ τοῦ παρόντος κυρουμένων Συμφωνίας καὶ παραρτήματος ἄρχεται ἀπὸ τῆς πληρώσεως τῶν ἐν ἄρθροις 83 καὶ 84 αὐτῆς προϋποθέσεων.

Ἐν Ἀθήναις τῇ 30 Ἀπριλίου 1974

Ο ΠΡΟΕΔΡΟΣ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ
ΦΑΙΔΩΝ ΓΚΙΖΙΚΗΣ
ΣΤΡΑΤΗΓΟΣ

ΤΟ ΥΠΟΥΡΓΙΚΟΝ ΣΥΜΒΟΥΛΙΟΝ
Ο ΠΡΩΘΥΠΟΥΡΓΟΣ
ΑΔΑΜΑΝΤΙΟΣ ΑΝΔΡΟΥΤΣΟΠΟΥΛΟΣ
ΤΑ ΜΕΛΗ
ΚΩΝΣΤ. ΡΑΛΛΗΣ, ΗΛ. ΜΠΑΛΟΠΟΥΛΟΣ, ΣΠΥΡ. ΤΕΤΕΝΕΣ, ΒΑΣ. ΤΣΟΥΜΠΑΣ, ΣΤΥΛ. ΤΡΙΑΝΤΑΦΥΛΛΟΥ, ΓΕΩΡΓ. ΤΣΟΥΜΑΝΗΣ, ΔΗΜ. ΤΣΑΚΩΝΑΣ, ΠΑΝ. ΧΡΗΣΤΟΥ, ΤΖΩΡ. ΤΖΩΡΤΖΑΚΗΣ, ΠΑΝ. ΠΑΠΑΡΡΟΔΟΠΟΥΛΟΣ, ΧΑΡ. ΓΕΩΡΓΙΟΠΟΥΛΟΣ, ΤΡΥΦ. ΤΡΙΑΝΤΑΦΥΛΛΑΚΟΣ, ΑΛΕΞ. ΤΖΑΒΕΛΑΣ, ΚΩΝΣΤ. ΣΚΙΑΔΟΠΟΥΛΟΣ.

Ἐθεωρήθη καὶ ἐτέθη ἡ μεγάλη τοῦ Κράτους σφραγίς.

Ἐν Ἀθήναις τῇ 2 Μαΐου 1974

Ο ΕΠΙ ΤΗΣ ΔΙΚΑΙΟΣΥΝΗΣ ΥΠΟΥΡΓΟΣ
ΣΤΥΛΙΑΝΟΣ ΤΡΙΑΝΤΑΦΥΛΛΟΥ

ΕΚ ΤΟΥ ΕΘΝΙΚΟΥ ΤΥΠΟΓΡΑΦΕΙΟΥ

ANNEX II.

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4. *Al-Dulimi and Montana Management Inc. v Switzerland,* App No 5809/08 (ECHR, 21 June 2016)
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2. Case C-266/16 *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs Secretary of State for Environment, Food and Rural Affairs* [2018] Judgment (Grand Chamber)
3. Case C-104/16 *Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)* [2016] Judgment (Grand Chamber)
4. Case C-15/17 *Bosphorus Queen Shipping Ltd Corp. v Rajavartiolaitos* [2018] Judgment (Third Chamber)
5. Case C464/13 and C465/13 *Europäische Schule München v Silvana Oberto and Barbara O'Leary* [2015] Judgment (Fourth Chamber)

6. Case C104/16 P *Council of the European Union v Front Populaire pour la liberation de la Saguia-el-Hamra et du Rio de Oro* [2016] Judgment (Grand Chamber)
7. Case C-621/18 *Andy Wightman and Others v Secretary of State* [2018] Judgment (Full Court)
8. Case C-613/12 *Helm Düngemittel GmbH v Hauptzollamt Krefeld* [2014] Judgment
9. Case C-613/12 *Gennaro Currà and Others v Bundesrepublik Deutschland, joined party: Repubblica italiana* [2012] Judgment
10. Case T91/10 *Lucchini SpA v European Commission* [2014] Judgment (Eighth Chamber)
11. Opinion 1/13 of the Court (Grand Chamber) 14 October 2014
12. Opinion 2/13 of the Court (Grand Chamber), 18 December 2014
13. Opinion 2/15 of the Court *Free Trade Agreement between the European Union and the Republic of Singapore* [2017] (Full Court)