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EFFECTS OF ARMED CONFLICTS ON TREATIES

Texts of draft articles 1, 2, 3, 4, 5, 6 [5bis],¹ 7 [5], 8, 9 [8 bis], 10 [8 ter], 11 [8 quater], 12 [9], 13 [10], 14 [11], 15, 16 [12], 17 [13], 18 [14] provisionally adopted on first reading by the Drafting Committee on 4 June 2008

Article 1

Scope

The present draft articles apply to the effects of an armed conflict in respect of treaties between States where at least one of the States is a party to the armed conflict.

¹ The number in square bracket refers to the corresponding article in the third report of the Special Rapporteur (A/CN.4/578), as well as the report of the Working Group (A/CN.4/L.726).

Article 2

Use of terms

For the purposes of the present draft articles:

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

(b) “armed conflict” means a state of war or a conflict which involves armed operations which by their nature or extent are likely to affect the application of treaties between States parties to the armed conflict or between a State party to the armed conflict and a third State, regardless of a formal declaration of war or other declaration by any or all of the parties to the armed conflict.

Article 3

Non-automatic termination or suspension

The outbreak of an armed conflict does not necessarily terminate or suspend the operation of treaties as:

- (a) between the States parties to the armed conflict;
- (b) between a State party to the armed conflict and a third State.

Article 4

Indicia of susceptibility to termination, withdrawal or suspension of treaties

In order to ascertain whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict, resort shall be had to:

- (a) articles 31 and 32 of the Vienna Convention on the Law of Treaties; and
- (b) the nature and extent of the armed conflict, the effect of the armed conflict on the treaty, the subject-matter of the treaty and the number of parties to the treaty.

Article 5

Operation of treaties on the basis of implication from their subject matter

In the case of treaties the subject matter of which involves the implication that they continue in operation during armed conflict, the incidence of an armed conflict will not as such affect their operation in whole or in part.²

Article 6 [5 bis]

Conclusion of treaties during armed conflict

1. The outbreak of an armed conflict does not affect the capacity of a State party to that conflict to conclude treaties in accordance with the Vienna Convention on the Law of Treaties.
2. States may conclude lawful agreements involving termination or suspension of a treaty that is operative between them during situations of armed conflict.

Article 7 [5]

Express provisions on the operation of treaties

Where a treaty expressly so provides, it shall continue to operate in situations of armed conflict.

Article 8

Notification of termination, withdrawal or suspension

1. A State engaged in armed conflict intending to terminate or withdraw from a treaty to which it is a party, or to suspend the operation of that treaty, shall notify the other State party or States parties to the treaty, or its depositary of that intention.
2. The notification takes effect upon receipt by the other State party or State parties.
3. Nothing in the preceding paragraphs shall affect the right of a party to object, in accordance with the terms of the treaty or applicable rules of international law, to termination, withdrawal or suspension of the operation of the treaty.

² See the Annex to the present draft articles for a list of categories of treaties the subject matter of which involves the implication that they continue in operation during armed conflict.

Article 9 [8 *bis*]

Obligations imposed by international law independently of a treaty

The termination of or the withdrawal from a treaty, or the suspension of its operation, as a consequence of an armed conflict, shall not impair in any way the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of that treaty.

Article 10 [8 *ter*]

Separability of treaty provisions

Termination, withdrawal from or suspension of the operation of the treaty as a consequence of an armed conflict shall, unless the treaty otherwise provides or the parties otherwise agree, take effect with respect to the whole treaty except where:

- (a) the treaty contains clauses that 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.

Article 11 [8 *quater*]

Loss of the right to terminate, withdraw from or suspend the operation of a treaty

A State may no longer terminate, withdraw from or suspend the operation of a treaty as a consequence of an armed conflict if:

- (a) it has expressly agreed that the treaty remains in force or continues in operation; or

(b) it can by reason of its conduct be considered as having acquiesced in the continued operation of the treaty or in its maintenance in force.

Article 12 [9]

Resumption of suspended treaties

The resumption of the operation of a treaty suspended as a consequence of an armed conflict shall be determined in accordance with the indicia referred to in draft article 4.

Article 13 [10]

Effect of the exercise of the right to individual or collective self-defence on a treaty

A State exercising its right of individual or collective self-defence in accordance with the Charter of the United Nations is entitled to suspend in whole or in part the operation of a treaty incompatible with the exercise of that right, subject to any consequences resulting from a later determination by the Security Council of that State as an aggressor.

Article 14 [11]

Decisions of the Security Council

The present draft articles are without prejudice to the legal effects of decisions of the Security Council in accordance with the provisions of Chapter VII of the Charter of the United Nations.

Article 15

Prohibition of benefit to an aggressor State

A State committing aggression within the meaning of the Charter of the United Nations and resolution 3314 (XXIX) of the General Assembly of the United Nations shall not terminate, withdraw from, or suspend the operation of a treaty as a consequence of an armed conflict if the effect would be to the benefit of that State.

Article 16 [12]

Rights and duties arising from the laws of neutrality

The present draft articles are without prejudice to the rights and duties of States arising from the laws of neutrality.

Article 17 [13]

Other cases of termination, withdrawal or suspension

The present draft articles are without prejudice to the termination, withdrawal or suspension of treaties as a consequence of, *inter alia*:

- (a) the agreement of the parties; or
- (b) a material breach; or
- (c) supervening impossibility of performance; or
- (d) a fundamental change of circumstances.

Article 18 [14]

Revival of treaty relations subsequent to an armed conflict

The present draft articles are without prejudice to the right of States parties to an armed conflict to regulate, subsequent to the conflict, on the basis of agreement, the revival of treaties, terminated or suspended as a result of the armed conflict.
