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Research Article

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Could VCLT 52 Block a Peace Treaty Entailing Territory Transfer After the Ukraine-Russia War?

VAHS 52, Ukrayna-Rusya Savaşı Sonrasında Ülke Transferini İçeren Bir Barış Antlaşmasını Engelleyebilir mi?

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Abstract

This study examines the scope and limitations of Article 52 of the Vienna Convention on the Law of Treaties (VCLT) in the context of a potential Ukraine-Russia peace treaty involving territorial transfer. While VCLT 52 invalidates treaties concluded under coercion, its misinterpretation as an absolute prohibition on post-conflict territorial agreements has fueled debate. The interplay between coercion, realpolitik, and treaty validity requires a precise legal framework to prevent contradictions in conflict resolution.

The first section traces the historical evolution of coercion as a ground for treaty invalidation, from the Peace of Westphalia to modern treaty law. The second section examines realpolitik and coercion, emphasizing that VCLT 52 addresses coercion as a matter of form rather than content. While territorial transfers are not inherently invalid, treaties violating *jus cogens* norms, such as genocide, fall under VCLT 53.

The final section applies these principles to the Ukraine-Russia conflict, assessing whether territorial concessions in a negotiated peace could be legally binding. The study challenges the assumption that all post-war territorial treaties are *ab initio* invalid, reaffirming the doctrinal and judicial acquis of international law, particularly the primacy of the *pacta sund servanda* principle

Öz

Bu çalışma, Viyana Antlaşmalar Hukuku Sözleşmesi'nin (VAHS) 52. maddesinin kapsamını ve sınırlarını, toprak transferini içeren olası bir Ukrayna-Rusya barış antlaşması bağlamında incelemektedir. VAHS 52, cebir yoluyla akdedilen antlaşmaları geçersiz kılarken, savaş sonrası toprak anlaşmalarına mutlak bir yasak olarak yanlış yorumlanması hukuki tartışmalara yol açmıştır. Cebir, reel politik ve antlaşma geçerliliği arasındaki etkileşim, çelişkilerin önlenmesi için kesin bir hukuki çerçeve gerektirmektedir.

Çalışmanın ilk bölümü, Westphalia Barışı'ndan modern antlaşma hukukuna kadar cebrin bir antlaşma geçersizliği sebebi olarak tarihsel gelişimini ele almaktadır. İkinci bölümde reel politik ve cebir ilişkisi incelenmekte, VAHS 52'nin cebri içerikten ziyade şekli bir unsur olarak ele aldığı vurgulanmaktadır. Toprak transferleri doğası gereği geçersiz olmamakla birlikte, soykırım gibi *jus cogens* normlarını ihlal eden antlaşmalar VAHS 53 kapsamında değerlendirilmelidir.

Son bölümde bu ilkeler Ukrayna-Rusya çatışmasına uygulanarak, müzakere edilebilecek bir barış sürecinde toprak tavizlerinin hukuken bağlayıcı olup olamayacağı analiz edilmektedir. Çalışma, savaş sonrası tüm ülke transferi antlaşmalarının baştan geçersiz olduğu varsayımına meydan okuyarak, özellikle *pacta sund servanda* ilkesinin öneminden hareketle uluslararası hukukun doktrinel ve yargısal müktesebatını teyit etmektedir.

Keywords VCLT Article 52 · Ukraine-Russia war · coercion in international law · invalidity of treaties · pacta sund servanda

Anahtar Kelimeler VAHS 52. madde · Ukrayna-Rusya savaşı · uluslararası hukukta cebir · antlaşmaların geçersizliği · pacta sund servanda

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I. Introduction

Vienna Convention on the Law of Treaties[1] (VCLT) 52 stipulates the invalidity of treaties concluded under coercion, making it a crucial provision in the history and philosophy of international law. It intersects with key issues such as peaceful dispute resolution, peace and border treaties, the use of force, treaty interpretation, and global security. The principle that coercion invalidates treaties has developed alongside the prohibition of the threat or use of force in international law. State practices and legal doctrine from the Peace of Westphalia through the World Wars offer insights into how this issue has evolved and how VCLT 52 should be interpreted in contemporary conflicts. As discussions continue regarding legal solutions to the Ukraine-Russia war, a precise and methodologically sound approach is necessary to avoid misinterpretations.

This study first examines the development of treaty invalidation due to coercion before and after VCLT 52. It then presents case studies demonstrating how state practice has shaped this principle from Westphalia to the present day. Drawing from historical and theoretical frameworks, a preliminary legal assessment is conducted, followed by a detailed examination of the core legal conclusions under an independent subheading. The first section establishes a structured reasoning regarding the invalidity of treaties concluded under coercion. The second section undertakes a theoretical analysis of the dilemmas a prospective Ukraine-Russia peace treaty might pose.

Before addressing the Ukraine-Russia conflict, it is essential to define the limits of VCLT 52 within a realpolitik framework. A proper understanding of VCLT 52 is contingent upon recognizing the parameters that shape state behavior. The extent to which political and economic conditions constitute coercion in treaty formation raises the question of whether VCLT 52 could interpret realpolitik itself as a basis for invalidating a treaty. However, international law does not prohibit realpolitik elements but instead regulates them within legal parameters. Overlooking the context in which states negotiate peace treaties risks dismissing a significant portion of international legal doctrine. In this regard, it is argued that the International Law Commission (ILC) adopts a non-distant causality approach to state responsibility and that coercion should be understood as a manipulation of consent during negotiations. Furthermore, VCLT 52 treats coercion as a matter of form rather than content, meaning that the validity of peace treaties should be assessed under VCLT 53 rather than VCLT 52. For instance, territory transfer is not inherently a *jus cogens* violation, whereas a treaty authorizing genocide would be invalid under VCLT 53.

The third section first outlines the causes of the Ukraine-Russia war. Some scholars argue that any post-war territorial transfer would be invalid *ab initio* under VCLT 52, as it would undermine the international legal order. This interpretation -asserting the invalidity of a hypothetical peace treaty- is objectively analyzed before being critiqued within the legal principles established in the first two sections. The scope of VCLT 52 in a prospective peace treaty is examined in terms of customary law, ratione temporis, causality, International Court of Justice (ICJ) standards, and the nature of peace and border treaties.

The interpretation we criticize presents an impasse in conflict resolution. It risks creating a legal paradox where territorial acquisition by force is illegitimate, yet territorial concessions through negotiation are also deemed unlawful. This dilemma is particularly relevant given that the Ukraine-Russia war remains unresolved by the UN Security Council. The study emphasizes that inconsistent legal frameworks should not be imposed upon future peace negotiations. While territorial acquisition by force violates UN Charter 2(4), VCLT 52 does not itself constitute a violation of UN Charter 2(4) but instead protects the principle of free consent in treaty-making.

[1] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331.

According to ICJ jurisprudence, when a treaty is concluded through procedures ensuring free consent, territory transfers no longer constitute a violation of territorial integrity under *jus cogens* principles. This is because a treaty-based resolution is regarded as a peaceful settlement. From this point forward, ICJ case law and general principles of international law prioritize *pacta sund servanda*. Thus, this study seeks to establish a coherent interpretation of VCLT 52, distinguishing its technical application in the context of the Ukraine-Russia war.

II. Historical Context

A. Evolution of Coercion as a Ground for Treaty Invalidation

The temporal application of ensuring compliance with international treaties through threat or use of force began with the Covenant of the League of Nations[2] and the Paris Pact,[3] aligning with the ILC's legal framework. This raises the need to evaluate the validity of the Versailles Treaty.[4] For instance, Article 145 of the treaty justified Germany's obligation to transfer certain shares to France by relying on the principle that post-war realities should be voluntarily reflected in treaty obligations.[5]

If the Versailles Treaty is considered valid, it follows that peace treaties ending military hostilities constitute a traditional exception to VCLT Article 52.[6] Notably, after World War I, none of the defeated states argued that the terms of the peace treaties -although imposed on them- amounted to coercion that would relieve them of their legal obligations under those treaties.[7] Until 1935, scholarly discussions on treaty invalidation primarily focused on coercion directed at representatives or ratifying authorities, rather than coercion applied to the state itself.[8]

How, then, did the concept of coercion against state representatives expand into a ground for invalidating treaties based on coercion against the state itself? This doctrinal shift was significantly influenced by early 20th-century U.S. foreign policy, as well as communist legal thought and Third World Approaches to International Law (TWAIL).[9] The 1935 Harvard Law School draft of Article 32 reflected these evolving perspectives:

> *"As the term is used in this Convention, duress involves the employment of coercion directed against the persons singing a treaty on behalf of a State or against the persons engaged in ratifying or acceding to a treaty on behalf of a State; provided that, if the coercion has been directed against a person singing a treaty on behalf of a State and if with knowledge of this fact the treaty signed has later been ratified by that State without coercion, the treaty is not to be considered as having been entered into by that State in consequence of duress"*[10]

[2] *Covenant of the League of Nations* (adopted 28 June 1919, entered into force 10 January 1920).

[3] *Kellogg–Briand Pact* (adopted 27 August 1928, entered into force 25 July 1929) 94 LNTS 57.

[4] *Treaty of Versailles* (adopted 28 June 1919, entered into force 10 January 1920).

[5] Green Haywood Hackworth, *Digest of International Law* (U.S. Government Printing Office 1943) 157.

[6] Charles E. Partridge, 'Political and Economic Coercion: Within the Ambit of Article 52 of the Vienna Convention on the Law of Treaties?' 5 The International Lawyer 755, 761.

[7] Lord Mc Nair, *The Law of Treaties* (Oxford University Press 1961) 209; Partridge (n 6) 761.

[8] Harvard Law School, *Research in International Law under the Auspices of the Faculty of the Harvard Law School, Part III, art. 32* (1935); Partridge (n 6) 762.

[9] Stuart S. Malawer, 'Imposed Treaties and International Law' 7 California Western International Law Journal 5.

[10] 'Article 32. Duress' 29 American Journal of International Law 1148.

As demonstrated, treaty invalidity due to coercion has historically been recognized only when directed at individuals and when the state did not later affirm the treaty. In the commentary on this issue, Grotius is cited, emphasizing that the validity of treaties is grounded in state consent, which derives from sovereign equality and must be free from fear.[11]

Grotius elevated the principle of good faith in treaty-making to a higher purpose -preserving the hope of peace.[12] His broad interpretation of *bellum justum*[13] (just war) also introduced the concept of legitimate use of force.[14] The role of state will and consent[15] in transitioning from war to peace as a mechanism for securing lasting peace is articulated as follows:

> *"… all promises made in the course of the war, or for the purpose of terminating it, are valid to the extent that they cannot be made void by reason of a fear unjustly inspired, except with the consent of the party to whom the promise."*[16]

Vattel, one of the first authors of international law literature, also brought a similar exception to Grotius in respect of treaties:

> "*A sovereign cannot dispense himself from observing a treaty of peace by alleging that it was extorted from him by fear or by constraint. In the first place, if this plea were admitted, it would make it impossible for any reliance to be put upon treaties of peace; for there are few such treaties against which that plea could not be brought as a cover for bad faith*"

Vattel also added a comment to this exception:

> "*If an ambitious and unjust conqueror subdues a Nation, and forces it to accept hard, disgraceful, and unendurable terms of peace, necessity may constrain the Nation to submit to them. But this show of peace is not real peace…*"[17]

The specific exception for peace treaties represents the most significant departure from the private law analogy, which equates treaty invalidity with lack of consent.[18] Another departure emerged with new perspectives on state coercion, expanding the focus beyond coercion of representatives to include state

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[11] Ibid. 1119.

[12] Hugo Grotius, *De Iure Belli Ac Pacis* (trans Francis W Kelsey, Clarendon Press 1925) lib. III, ch. XXV, 1.

[13] Before Grotius, the concept of just war was characterized by Augustine as a legitimate remedy when it remained the only means to redress an injustice. Drawing on the example of the Donatists in North Africa, who refused to accept Catholicism, he argued that "*God Himself used violence and force*" against those who rejected Catholic Christianity -thereby justifying coercion in matters of faith and claiming that those who resisted could justly be subjected to violence. See Kadir Albayrak, *Semavi Dinlerde Barış ve Şiddet İkilemi* (Sarkaç 2010) 164-165. Along with Augustine, Isidore's Etymologiae provided the foundation for the doctrine of just war up to the time of Grotius. See, <https://www.thelatinlibrary.com/isidore.html> Access: 28 October 2025, Book V, IV-VII; Hakkı Hakan Erkiner, 'Grotius Öncesinde İlk Modern Uluslararası Hukuk Düşüncesinin Oluştuğu Tarihsel Koşullar ve Erken Klâsik Dönemdeki Öğreti' 18 Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi 51, 103. In contrast to this view, which reduced the criterion of just war to Christian doctrine, Vitoria based his thesis that innocents must not be killed on the principles of natural law. See Ibid 108.

[14] H. G. de Jong, 'Coercion in the conclusion of treaties: A consideration of Articles 51 and 52 of the Convention on the the Law of Treaties' 15 Netherlands Yearbook of International Law 209, 227-228.

[15] Will is an active act in making a law, whereas consent is passive. The VCLT used the term consent instead of will. Matthew Craven, 'The Ends of Consent' in Michael J. Bowman and Dino Kritsiotis (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge University Press 2018) 107-108.

[16] Grotius (n 12) lib. II, ch. XVII, sec. 19 and lib. III, ch. XIX, sec. 11; 'Article 32. Duress' (n 10).

[17] Emer de Vattel, *Le droit des gens* (Charles Ghequiere Fenwick tr, Carnegie institution of Washington 1916) 356, 'Article 32. Duress' (n 10) 1150. See also Malawer (n 9) 13-15.

[18] Hersch Lauterpacht, *Private Law Sources and Analogies of International Law (with Special Reference to International Arbitration)* (Longmans, Green and Company, Limited 1927) ch. 1.

consent as a whole. However, the Harvard Draft (1935), which limited coercion to that of the negotiator, reflected the prevailing academic consensus at the time.[19]

For instance, Weinschel argued that there was no theoretical or practical basis for considering coercion beyond that of the representative.[20] Similarly, Woolsey maintained that while coercion invalidates private agreements, it does not affect interstate treaties. Wharton supported this view, citing examples such as the treaty between France and Germany after the Franco-Prussian War (1870–1871), the post-Waterloo peace treaty (1815), and the Treaty of Guadalupe Hidalgo (1848).[21] These scholars shared the belief that consent is essential for treaty validity, and that validity depends not on the conditions under which consent arises but on whether authorities have the means to exercise it.

As Frankfurt argued, the core principle of will in law is the possibility of acting otherwise,[22] and states express their will through their representatives or organs. Expanding the scope of coercion to include the state itself was viewed by many as artificial and unjustified.[23] However, some contended that the state is more than the sum of its citizens[24] and that state coercion could manifest in the coercion of state organs.[25] This debate surfaced in Brazil's 1921 proposal to amend the Covenant of the League of Nations to invalidate treaties concluded in violation of the prohibition on aggression, which was ultimately rejected.[26]

Although the 1935 Harvard Draft Commentary limited the addressee of coercion, it did not restrict the forms of coercion in negotiations, provided they exceeded mere persuasion or unjust influence.[27] Notably, the distinction between *vis absoluta* and *vis compulsiva* in private law was not emphasized,[28] and coercion was considered in both physical and psychological terms.[29] It was widely accepted that impairment of the representative's consent constituted a ground for invalidity, as in private law, while the idea that a state could invalidate a treaty based on its terms was rejected by consensus. Oppenheim explicitly stated that a defeated state's attempt to nullify a peace treaty on this basis was legally unacceptable.[30]

Post-World War I scholarship followed a similar approach, with Turlington particularly cautioning against applying private law analogies to states.[31] At the time, discussions focused on the nature of coercion rather than its form, distinguishing between treaties imposed through lawful and unlawful warfare. Accordingly, a treaty imposed through a war consistent with international law (e.g., under the Covenant of the League of Nations and the Paris Pact) remained valid, whereas a treaty imposed through an unlawful war was considered invalid.[32] The Budapest Committee articles interpreting the Paris Pact prohibited the de jure

[19] 'Article 32. Duress' (n 10) 1150-1151.

[20] Herbert Weinschel, 'Willensmangel bei volkerrechtlichen Vertragen' 15 Zeitschrift fur Volkerrecht 446 ff; de Jong (n 14) 230.

[21] Malawer (n 9) 16-17.

[22] Harry G. Frankfurt, 'Alternate Possibilities and Moral Responsibility' 66 Journal of Philosophy 829; Ibo van de Poel and Jessica Nihlén Fahlquist, 'Risk and Responsibility' in Sabine Roeser and others (eds), *Handbook of Risk Theory: Epistemology, Decision Theory, Ethics, and Social Implications of Risk* (Springer Netherlands 2012) 884. See also Oliver Dörr and Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2018) Article 52, para. 21.

[23] Partridge (n 6) 762.

[24] Charles de Visscher, 'Des traitées imposées par la violence' 12 Revue de droit international et de legislation comparée 517-518; de Jong (n 14) 230.

[25] Visscher (n 24) 522; James Brierly, 'Règles générales du droit de la paix' 58 Hague Recueil 207; de Jong (n 14) 231.

[26] Malawer (n 9) 50-51.

[27] 'Article 32. Duress' (n 10) 1151.

[28] de Jong (n 14) 224 ff.

[29] 'Article 32. Duress' (n 10) 1150-1151. Regarding the necessity of not expanding the scope of the threat, see Visscher (n 24) 524.

[30] Malawer (n 9) 17.

[31] Ibid 21.

[32] 'Article 32. Duress' (n 10) 1152.

recognition of territorial gains obtained in violation of the pact.[33] Similarly, Article 11 of the 1933 Montevideo Convention[34] obligated states not to recognize advantages gained by force.

After World War I, the Stimson Doctrine was adopted, establishing the principle of non-recognition of territorial acquisitions achieved through aggression or coercion. In this context, recognition was to be withheld from situations that violated fundamental norms of international law, particularly the principles of self-determination and the prohibition of the use of force. Importantly, this doctrine of non-recognition was intended to have legal, rather than merely diplomatic, consequences. For example, when Japan invaded Manchuria in 1931 and established the puppet state of Manchukuo, many states, including the United States, refused to legally recognize the new entity, even while maintaining diplomatic relations with Japan.[35]

The 1935 Harvard Draft Commentary assessed coercion not in terms of wartime conditions but based on its direct impact on representatives. If a state accompanied treaty negotiations with an ultimatum or military action, this was interpreted as an expression of the victor's willingness to enforce peace terms rather than a reason for treaty invalidation.[36] This restrictive interpretation assumed that the representative retained the ability to sign or refuse the treaty, despite external pressures. For instance, the 1915 Japan-China Agreement, discussed in the following case study, was not considered invalid since no direct coercion was applied to China's representatives or leadership.[37]

Moreover, even coercion directed at representatives was subject to potential ratification by the state, allowing it to freely assess the treaty's content at a later stage.[38] Under the draft's provisions, treaty invalidity due to coercion required adjudication by a competent international court and did not have *ipso facto* effect. A state whose representatives were coerced could suspend its obligations rather than unilaterally terminate the treaty, pending judicial determination.[39] The commentary rejected *ab initio* invalidity or unilateral cancellation as impractical,[40] arguing that *ex officio* invalidation would allow any state to escape treaty obligations at will.

Following the Munich Agreement (1938) and the 1939 Harvard Draft Convention on the Rights and Duties of States in Cases of Aggression, provision 4(3) proposed the invalidation of treaties imposed by an aggressor. However, lack of scholarly consensus prevented the provision's widespread adoption.[41] This complex issue resurfaced during the preparatory work for the VCLT after World War II, underscoring the continuing challenge of defining coercion in treaty law.

B. The Development of VCLT 52

Article 107 of the UN Charter was designed to prevent the post-war legal order from being challenged by defeated states on the grounds of coercion. It stipulated that actions taken or authorized as a result of the war could not be invalidated based on other provisions of the Charter, thereby ensuring the stability of

[33] Malawer (n 9) 53.

[34] *The Montevideo Convention on the Rights and Duties of States* (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19.

[35] John Fischer Williams, 'The New Doctrine of "Recognition" 18 Transactions of the Grotius Society 109.

[36] 'Article 32. Duress' (n 10) 1154; de Jong (n 14) 222. This study identifies indirect coercion against representatives or state organs during negotiation and acceptance as the core focus of VCLT 52. It establishes a temporal threshold for coercion relevant to treaty invalidity. Specifically, only coercion linked to the negotiation process, rather than the broader context of war, can render a treaty invalid-provided that it is sufficiently severe to undermine state consent.

[37] Harold Scott Quigley, 'Legal Phases of the Shantung Questions' 6 Minnesota Law Review 380.

[38] 'Article 32. Duress' (n 10) 1155.

[39] Ibid 1159-1160.

[40] Ibid 1160.

[41] Malawer (n 9) 60-61.

the peace established after 1945.[42] Following World War II, Western scholars did not immediately abandon the traditional rule. Ross argued that questioning this principle would undermine the validity of all peace treaties,[43] while Keeton, citing the Nanking Treaty (1842) and Ottoman capitulations, supported this view.[44] Fitzmaurice, in contrast, claimed that the prohibition of the threat and use of force under the UN Charter had created a new rule, invalidating treaties secured through coercion, but failed to provide sufficient legal grounding.[45] Meanwhile, Lauterpacht and Schwarzenberger entertained the possibility of such a rule, while De Visscher rejected it.[46] McNair maintained that treaties imposed by military force could be invalidated by judicial review,[47] while Jennings warned that a new rule based on subjective claims could undermine treaty compliance.[48]

The VCLT represents the first international treaty codifying a comprehensive framework for treaty interpretation, solidifying the legal foundation of international treaties. The ILC undertook extensive work on treaty law, particularly during its 14th to 18th sessions, following the initial reports of Special Rapporteur Waldock and earlier contributions from Brierly, Lauterpacht, and Fitzmaurice.[49] Notably, Lauterpacht maintained continuity with his predecessors by asserting that a treaty imposed by force remains valid despite violating the principle of consent.[50] These reports, along with official governmental observations on the draft articles, constitute key reference materials for interpreting the VCLT.[51]

VCLT Article 52, which distinguishes international law from international relations, has long been criticized for ignoring the fact that military, economic, and political conditions are both fundamental factors and core components of treaties -a critique that predated the Ukraine-Russia war.[52] At its core, VCLT 52 questions the validity of state consent. A systematic interpretation of the provision, positioned after rules on error, fraud, and coercion directed at representatives, suggests that it concerns threats or force affecting the state's consent itself.[53] This framework was influenced by civil law doctrines on defects in consent (*vices du consentement*).[54]

However, state consent in treaty-making inherently involves military, geopolitical, and economic factors. The negation of coercion, as outlined in the ILC commentary,[55] reflects an expansive interpretation that is not limited to military intervention. In fact, the initial draft of Article 52 featured a narrower conception of coercion, with Waldock's restrictive interpretation receiving support from French, Spanish, and U.S. delegates, reflecting concerns over imperialist practices. Expanding grounds for treaty invalidity was deemed

[42] Ibid 117.

[43] Alf Ross, *A Textbook of International Law: General Part* (Lawbook Exchange 1947) 210.

[44] George Williams Keeton, *Extraterritoriality in International and Comparative Law (Volume 72)* (1948) 285, 350.

[45] Gerald Fitzmaurice, 'The Juridical Clauses of the Peace Treaties' 73 Recueil des Cours 255, 355; Malawer (n 9) 80.

[46] Malawer (n 9) 81-83.

[47] Nair (n 7) 207.

[48] Robert Yewdall Jennings, "General course on principles of international law" 121 Recueil des Cours 563.

[49] Herbert W. Briggs, 'The Travaux Préparatoires of the Vienna Convention on the Law of Treaties' 65 The American Journal of International Law 705.

[50] Lassa Francis Lawrence Oppenheim, *International Law: Peace*, vol 1 (Longmans, Green & Co. 1937) 702; Malawer (n 9) 25.

[51] *Text of the draft guidelines constituting the Guide to Practice on Reservations to Treaties, with commentaries, as provisionally adopted by the International Law Commission* (2010) See also Dörr and Schmalenbach (n 22) Article 52, paras. 10-15.

[52] Hans Joachim Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (Knopf 1948) 270-274; Partridge (n 6) 755.

[53] Alfred Verdross, *Die Quellen des universellen Völkerrechts* (1973) 60-61; de Jong (n 14) 220.

[54] Joe Verhoeven, 'Invalidity of Treaties: Anything New in/under the Vienna Conventions?' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford Academic, Oxford University Press 2011) 300.

[55] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969* (1971) 66, para. 3.

[56] Partridge (n 6) 757.

inconsistent with the principle of *pacta sund servanda*.[56] Notably, Waldock's role as rapporteur focused on defining grounds for invalidity rather than affirming treaty validity.[57]

The invalidity of treaties concluded under threat or use of force is limited to situations where such actions violate the principles of the UN Charter.[58] The ILC acknowledged similarities between coercion of a representative and coercion of a state,[59] yet drafted a separate provision emphasizing the gravity of threats or force against state officials.[60] Accordingly, coercion of a representative renders a treaty without legal effect, while coercion of a state invalidates a treaty if the treaty's results were obtained through threats or force contrary to international law.

Notably, the final text of VCLT 51 departed from Waldock's draft by omitting the term "personally"[61] and expanding coercion to include threats against a representative's relatives.[62] Additionally, the final text introduced the phrase "international law embodied in" the UN Charter, reinforcing the requirement that violations of Article 2(4) determine treaty invalidity.[63]

Key determinations regarding state coercion in VCLT 52:

i. The focus is on the treaty's consequences rather than the treaty itself.
ii. The term "invalid" is used, rather than stating the treaty has no legal effect.
iii. The threshold for coercion is a violation of the UN Charter.
iv. The entire treaty is invalidated, not just specific coercive provisions.[64]

Furthermore, treaties dictated to an aggressor state cannot be considered invalid due to coercion.[65] The UN General Assembly defines aggression as:

> "[T]*he use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.*"[66]

Thus, terms imposed on a state that has engaged in armed aggression are presumed valid. The scope of these terms is not confined to *status quo ante*, assuming that the victorious party possesses the authority to impose terms.

In the commentary on the draft text, the ILC noted that prior to the League of Nations Covenant, coercion did not affect treaty validity. However, a strong opposing view later emerged, reinforced by the Paris Pact.

[57] S. E. Nahlik, 'The Grounds of Invalidity and Termination of Treaties' 65 American Journal of International Law 736, 737-738.

[58] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 47, para. 3. Essentially, in the context of Articles 11 and 14 of the UN Charter, similar to Article 19 of the League Covenant, proposals for revising treaties concluded under direct coercion were introduced but ultimately rejected. Likewise, during the VCLT *travaux préparatoires*, a proposal to allow treaty revision as a remedy for coercion was considered but not adopted, Malawer (n 9) 107 ff.

[59] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 65, para. 3.

[60] Ibid 65-67.

[61] Ibid 65.

[62] de Jong (n 14) 226.

[63] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 66.

[64] The fact that Article 52 of the VCLT stipulates the invalidity of an entire agreement demonstrates that this provision does not, in itself, address the substantive content of the agreement in question. If the logical inference that 'VCLT Article 52 refers to Article 2(4) of the UN Charter, which in turn protects territorial integrity; therefore, the scope of VCLT Article 52 encompasses treaty provisions that violate territorial integrity' were valid, VCLT Article 52 would be expected to specify the invalidity of only those provisions that violate territorial integrity. Its failure to do so indicates a different rationale: that when an agreement is concluded without free will, its entire content is invalid. Accordingly, Article 52 primarily restricts the *form* in which an agreement is concluded, rather than its content.

[65] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969* 47, para. 3.

[66] *Resolution 3314 (XXIX). Definition of Aggression* (1974).

The criminalization of aggressive war in the Allied Military Tribunals' Charter and the explicit prohibition of the threat or use of force in Article 2(4) of the UN Charter further solidified this shift. The ILC considers this principle *de lege lata*, established through UN practice, rather than *de lege ferenda*.[67]

The prohibition on the threat or use of force, codified in the UN Charter, influences treaty law through the principle of *ex injuria jus non oritur*. The ILC acknowledged concerns that treaty invalidation claims could be abused, either through unsubstantiated allegations of coercion or the enforcement of treaty obligations through force, regardless of legality. However, it dismissed these objections, affirming that Article 2(4) represents one of the UN Charter's most fundamental principles.[68]

Additionally, Article 75 of the VCLT clarifies that a treaty resulting from measures against an aggressor state does not conflict with the VCLT, provided it aligns with the UN Charter.[69] Since justifications for the use of force influence the applicability of VCLT 52, various legal theories on legitimate force have emerged:

i. Force used to defend a right is justified.

ii. Force that destroys state independence is unjust.

iii. Legality is assessed based on the extent to which positive law permits force.[70]

The link between VCLT 52 and Article 2(4) necessitated clarification. During the San Francisco Conference, the term "force" was defined as physical or armed force, explicitly excluding economic and psychological pressure.[71] During the drafting of VCLT 52, a proposal to include "political and economic pressure" gained support from 19 states.[72] However, the ILC ultimately refrained from determining whether economic sanctions fall within the scope of coercion, leaving Article 52's interpretation to future application in light of the UN Charter.[73] In continued practice this ambiguity has resulted in Article 2(4) of the Charter becoming more permissive -at least from an economic perspective- of the use of force.[74]

The ILC acknowledged that a state could initially conclude a treaty through the threat or use of force, but the existence, universality, and effectiveness of the UN would ultimately render such a situation unsustainable.[75] It idealized and positioned the UN as a central authority in ensuring the application of VCLT 52, fully aligning the prohibition of coercion with Article 2(4) of the UN Charter. The ILC also clarified that Article 52 applies not only to UN member states but also to non-member states and multilateral treaties.[76]

The ILC further emphasized that a treaty whose results were obtained through coercion is invalid *ab initio*, meaning its nullity does not depend on the request of the injured state. However, Waldock's original draft, submitted to the ILC on May 6, 1963, proposed alternative formulations, including allowing the affected state to reserve the right not to be bound while coercion persisted or to approve the treaty at a later stage.[77] Following deliberations, *ab initio* invalidity was ultimately adopted as the legal consequence of Article 52.[78]

[67] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 66, para. 1.

[68] Ibid 66, para. 2.

[69] Although Russia's status as the aggressor in the Ukraine-Russia war is evident, the absence of a "peace through force" treaty as outlined in VCLT Article 75 necessitates that the parties' future peace negotiations remain unrestricted in terms of content.

[70] de Jong (n 14) 228.

[71] Leland M. Goodrich and Edward Hambro, *Charter of the United Nations: Commentary and Documents* (1949) 104.

[72] Partridge (n 6) 759. See also Louis Henkin, *Force, Intervention, and Neutrality in Contemporary International Law* (1963) 163.

[73] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 66, para. 3.

[74] Partridge (n 6) 765.

[75] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969* 66, para. 4.

[76] Ibid 66, para. 5.

[77] Claud Humphrey Meredith Sir Waldock, *Report on the Law of Treaties, by Sir Humphrey Waldock, Special Rapporteur* (1963) 44.

[78] Partridge (n 6) 756. The VCLT has set out procedures for asserting invalidity in articles 65, 66 and 67. See Verhoeven (n 54) 308-315.

Thus, Articles 51 and 52 were distinguished from cases involving mistake, fraud, or corruption, which result in *ex nunc* invalidity due to defects in consent.

Within the framework of the VCLT, agreements concluded under coercion by state representatives are considered to have no legal effect, while agreements concluded under coercion directed at the state itself are explicitly deemed invalid. Therefore, VCLT 52 cannot be analogized to non-self-executing norms -legal rules that are formally in force but lack mechanisms or willingness for implementation- since it directly establishes a cause of invalidity, not mere inapplicability. The ILC intended that treaties within the scope of Articles 51 and 52 should not be recognized under any circumstances, ensuring that the parties remain in a position of complete equality without requiring a separate treaty to confirm nullity.[79] Additionally, the ILC clarified that Article 52 applies only to treaties concluded after the emergence of modern international law and does not affect the validity of prior treaties.[80] Although the ILC did not define the temporal scope of the principle, it suggested that its application should not be limited to the adoption of the 1969 Convention but rather traced back to the principles of the UN Charter.

To determine the temporal scope of the prohibition on coercion, it is necessary to examine treaties and legal instruments prohibiting the use of force. The prohibition of force in treaty-making is reflected in multiple international treaties, including:

i. The UN Charter
ii. The Agreement on the Renunciation of War (Briand-Kellogg Pact, 1928)
iii. The Agreement on Non-Aggression and Non-Conciliation (Rio de Janeiro, 1933)
iv. The Chapultepec Act (March 8, 1945)
v. The Pact of the Arab League (March 22, 1945)
vi. The Mutual Assistance Agreement (September 2, 1947)
vii. The Charter of the Organization of American States (Bogotá, April 30, 1948)[81]

Following the explicit prohibition of war in the Paris Pact (1928), the League of Nations resolved in 1932 to reject treaties that contravened the pact.[82]According to ILC, in assessing the temporal limitations of VCLT 52, the Covenant of the League of Nations serves as a logical starting point for delineating its scope.[83]

C. State Practice

Practical experiences with coercively imposed treaties offer valuable insights into the appropriate legal approach and the development of a coherent normative framework for addressing such cases.

i. In 1526, King Francis I of France refused to comply with the Treaty of Madrid, which he had signed with Emperor Charles V, arguing that he had approved it under "force and compulsion" to escape captivity. According to Despagnet, this refusal violated *pacta sund servanda*, as the treaty was a product of prevailing conditions rather than physical force or direct threats.[84]

[79] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 66, para. 6.

[80] Ibid 66, para. 7.

[81] International Law Commission, *Chapter IV: Draft Code of Offences against the Peace and Security of Mankind* (Yearbook of the International Law Commission 1951) 135.

[82] Nair (n 7) 210.

[83] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, 66, para. 1.

[84] Frantz Despagnet, *Cours de droit international public* (Larose 1905) 542; 'Article 32. Duress' (n 10) 1156. For the view that the customary value of VCLT 52 is of little importance for very (too) old predecessors, see Verhoeven (n 54) 304.

ii. The Russo-Swedish Peace Treaty of 1616 was described by Russian Empire Vice-Chancellor Shafirov as a prejudiced and coerced agreement. Russia's rejection of this treaty later served as the primary justification for invoking the just war doctrine in the Great Northern War (1700–1721) against Sweden.[85]

iii. In 1772, Russia, Prussia, and Austria signed a treaty partitioning Poland. To secure the Polish Parliament's (Sejm) approval, Russian forces surrounded the country, imprisoned certain members, and confiscated their property. As a result, Poland lost half of its population and one-third of its territory. Despite internal reform efforts, Poland was again forced to approve a partition agreement in 1793 following a second Russian siege.[86]

iv. In 1807, Napoleon I of France lured King Ferdinand VII of Spain to Bayonne, where he coerced him into signing an agreement renouncing the Spanish crown. When Ferdinand refused, he was threatened with a treason trial, ultimately forcing his withdrawal. However, following Napoleon's defeat at the Battle of Leipzig, the treaty was declared invalid, with broad scholarly consensus affirming its nullity.[87]

v. In 1810, Napoleon Bonaparte compelled King Louis Napoleon of the Netherlands to approve the transfer of the coastal regions of Bouches-de-l'Escaut and Bouches-du-Rhin to the French Empire while the Dutch king was held captive in Paris. When France advanced further inland, Louis Napoleon opposed the annexation, but after being threatened with the occupation of Amsterdam, he abdicated. Grotius held that treaties ratified by captive rulers were invalid,[88] while Vattel[89] and Phillipson[90] argued that such treaties remained void unless later ratified by the nation.[91]

vi. In 1905, following Japan's victory in the Russo-Japanese War, the Japanese Emperor sent a letter to the Korean Emperor, demanding approval of a treaty placing Korea under Japanese protection. Japanese forces surrounded the Korean palace and threatened the emperor and cabinet members with physical harm, leading to the treaty's approval. Korea later sought to challenge the treaty's validity at the 1907 Hague Peace Conference but was denied participation. Ultimately, the 1965 Japan–Republic of Korea Agreement declared all pre-1910 treaties invalid.[92]

vii. Shortly after the U.S. occupation of Haiti in 1915, an agreement was signed, formalizing U.S. control over Haiti's finances and governance. Records from the U.S. Senate session acknowledge the pressure exerted for ratification, though defenders of the treaty argued it was in Haiti's best interest.[93] To secure ratification, Secretary Daniels employed coercive measures, including salary cuts and continued military occupation.[94] The U.S. similarly pressured Cuba through the Platt Amendment, which forced Cuba to align its constitution with provisions of the 1903 U.S.-Cuba Treaty.[95]

viii. In 1915, Japan issued 21 Demands to China, seeking broad political, economic, and military control. The ultimatum, backed by military threats, was not directed at representatives but at China itself.[96]

[85] Petr Pavlovich baron Shafirov, *A Discourse Concerning the Just Causes of the War Between Sweden and Russia: 1700-1721* (Oceana Publications 1973); Malawer (n 9) 15-16.

[86] 'Partitions of Poland', Britannica (2024). <https://www.britannica.com/event/Partitions-of-Poland> Access: 3 December 2025.

[87] 'Article 32. Duress' (n 10) 1155-1156.

[88] Grotius (n 12) lib. II, ch. XX, sec. 3.

[89] Vattel (n 17) 348.

[90] Coleman Phillipson, *Termination of War and Treaties of Peace* (T.F. Unwin Limited 1916) 161.

[91] 'Article 32. Duress' (n 10) 1156.

[92] *Treaty on Basic Relations Between Japan and the Republic of Korea* (adopted 22 June 1965, entered into force 18 December 1965) 583 UNTS 44, Article 2.

[93] Charles Evans Hughes, *Our Relations to the Nations of the Western Hemisphere* (Princeton University Press 1928) 79.

[94] 'Article 32. Duress' (n 10) 1158.

[95] Ibid 1158.

While China complied, its delegation at the 1919 Paris Peace Conference formally reserved the right to challenge the treaty's validity in the future.[97] This reservation resurfaced at the 1922 Washington Naval Conference, where China requested a treaty review. However, China never explicitly invoked coercion as grounds for invalidation.[98] The U.S., citing its Open Door Policy, refused to recognize the treaty's provisions.[99]

ix. The Treaties of Versailles, Saint-Germain, Trianon, Neuilly, and Sèvres, which ended World War I, imposed territorial and population losses, financial reparations, and military restrictions on the defeated states.[100] Though widely viewed as a "Diktat" (dictated peace) in Germany and other defeated states, the victorious powers firmly enforced the agreements. Until 1936, Germany challenged the treaty based on Wilson's Fourteen Points and technical inconsistencies but never formally claimed coercion as grounds for invalidity.[101] Moreover, no defeated state challenged the treaties at the Permanent Court of International Justice (PCIJ),[102] likely because the 1928 Paris Pact's prohibition on force was not retroactive.

x. Before World War II, various treaties were challenged on grounds of coercion. Germany invoked representative coercion in disputing the Bucharest and Brest-Litovsk treaties,[103] with Russia denouncing the Brest-Litovsk Treaty as an "annexationist and imperialist" peace. Russia argued that the treaty resulted from a war not fought for defensive purposes.[104] Similarly, Ireland rejected Article 4 of its 1921 treaty with Great Britain, claiming it had been signed under threat of renewed war.[105] Requests for treaty revision based on coercion also arose under Article 19 of the League of Nations Covenant. Bolivia challenged its 1904 treaty with Chile, and Peru sought revision of its 1883 treaty with Chile, both citing coercion.[106] While Peru later withdrew its request, the League formed a committee to assess Bolivia's claim. However, the League Assembly ruled that it could not compel treaty revision but could issue a recommendation if there were material or moral justifications.[107]

xi. The 1938 Munich Agreement and the subsequent German-Czechoslovak Citizenship Agreement exemplify coercion in treaty-making. Czechoslovakia was forced to cede the Sudetenland to Nazi Germany under explicit military threats, abandonment by key allies (the UK and France), and a lack of meaningful alternatives, rendering its government's consent effectively null.[108] Notably, this was not a peace treaty -it did not conclude an existing armed conflict. Despite being the primary affected party, Czechoslovakia was not represented at the negotiations. President Edvard Beneš and his government

[96] Stanley Kuhl Hornbeck, *Contemporary Politics in the Far East* (D. Appleton 1916) 320-325.

[97] Ge-Zay Wood, *The Shantung Question: A Study in Diplomacy and World Politics* (Fleming H. Revell Company 1922) 124.

[98] Carl Walter Young, *The International Legal Status of the Kwantung Leased Territory* (Johns Hopkins Press 1931) 160.

[99] Malawer (n 9) 26.

[100] For example, it was reported that if Versailles was not signed, the armistice would end and the allied and associated powers would take the necessary steps. Ibid 30.

[101] Ibid 29-30.

[102] While the main issue in the "Wimbledon" case was the relationship between the Versailles Treaty and Germany's neutrality status, Germany also put forward the Versailles Treaty as a product of coercion. However, the Permanent Court of International Justice (PCIJ) did not accept this argument. Ibid 61-62.

[103] Amos S. Hershey, 'Legal Status of the Brest-Litovsk and Bucharest Treaties in the Light of Recent Disclosures and of International Law' 12 The American Journal of International Law 815.

[104] Malawer (n 9) 28.

[105] 'Article 32. Duress' (n 10) 1159.

[106] Ibid 1159.

[107] Malawer (n 9) 48-49.

[108] The Editors of Encyclopaedia Britannica, *Munich Agreement* (2024) <https://www.britannica.com/event/Munich-Agreement> Access: 29 October 2025.

were left with a fait accompli, with no viable alternative but to accept the terms.[109] The Allied powers, including the U.S., initially accepted the agreement as valid until World War II began.[110] Scholars have debated the agreement's legal standing. Fenwick argued that while its content might be valid, its procedure rendered it invalid.[111] Wright attributed the agreement to Western panic and noted that Article 19 of the League Covenant did not prohibit territorial transfers.[112] Although no international court ruled on its invalidity, the District Court of The Hague addressed it in Amato Narodni Podnik v. Julius Keilwerth Musikinstrumentenfabrik. The defendant claimed that the agreements were invalid due to coercion, arguing that he should not be considered a German citizen under the Netherlands Decree on Enemy Property. The court ruled in his favor.[113] Later, the 1968 Prague Treaty between Germany and Czechoslovakia indirectly nullified the effects of the Munich Agreement.

xii. The 1937 Iran-Iraq border agreement, signed while Iraq was under British colonial rule, was later unilaterally terminated by Iran, citing inequality. Iraq contended that border agreements could not be unilaterally revoked. In response, Iran constructed oil facilities near the waterway and supported Kurdish forces in Iraq, pressuring Baghdad to renegotiate the agreement. At the 1975 OPEC Summit, Iran and Iraq reached a new border agreement.[114]

xiii. In 1947, the UN Security Council debated the validity of the 1936 Egyptian-British Agreement. The Egyptian delegate argued that the treaty, which had permitted British military presence in Egypt during peacetime, was coercive, unequal, and incompatible with the UN Charter due to verbal intimidation and its serious consequences. The UK countered that Egypt had not provided evidence proving it lacked free will in signing the agreement and asserted that the treaty remained valid unless revised by mutual consent.[115]

xiv. The 1977 Torrijos-Carter Treaties, signed between the U.S. and Panama, replaced the 1903 Hay-Bunau-Varilla Treaty, which Panama had long considered unequal.[116] The agreement outlined a gradual transfer of control over the Panama Canal, with full sovereignty reverting to Panama by the year 2000. It also established the canal's neutral status.[117] Following the transfer, Chinese companies have since provided services in canal operations. The 47th U.S. President, Donald Trump, stated that the canal was transferred to Panama, not China, but suggested that the U.S. would reclaim control under these conditions.[118]

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[109] These conditions show how the prospected Ukraine-Russia peace "should not happen". See André Rhoden-Paul and Jaroslav Lukiv, 'Zelensky says no peace deal without Ukraine involvement' BBC <https://www.bbc.com/news/articles/ckg051z21zno> Access: 29 October 2025.

[110] Malawer (n 9) 38.

[111] C. G. Fenwick, 'The Outlook for International Law' 33 American Journal of International Law 105, 105-106.

[112] Quincy Wright, 'The Munich Settlement and International Law' 33 American Journal of International Law 12, 29-30. Although Article 19 of the League Covenant does not explicitly state it, it was designed to allow the League Assembly to issue advisory opinions on the revision of imposed treaties. While some delegations sought to have such treaties declared invalid by the Assembly, these proposals were rejected. Instead, it was deemed sufficient for the League to recommend the revision of treaties that had already become unenforceable, thereby removing the obligation of member states to protect the attacked party. Malawer (n 9) 43-44.

[113] Erades, 'The Netherlands Decree on Enemy Property and Trade Marks owned by Sudeten Germans—Extraterritorial Effect of Czechoslovakian Legislation on Confiscation—Persona Stanai in Judicio of Germans—Situs of Trade Marks' 4 Nederlands Tijdschrift voor Internationaal Recht 428.

[114] Malawer (n 9) 102-104.

[115] Ibid 117-120.

[116] The 1903 Hay-Bunau-Varilla Treaty, though widely regarded by Panama as unequal and detrimental to its sovereignty, was not coercive in the legal sense; Panama did not claim that it had been concluded under force or threat of force, but rather that it reflected unequal bargaining conditions.

[117] Panama Canal Treaty of 1977 <https://2001-2009.state.gov/p/wha/rlnks/11936.htm#:~:text=Affairs%20%3E%20Related%20Links-,Panama%20Canal%20Treaty%20of%201977,2000%20and%20guarantees%20its%20neutrality>. Access: 02 February 2025.

[118] Shawn Yuan, 'Does China 'operate' Panama Canal, as Trump says?' BBC <https://www.bbc.com/news/articles/c1km4vj3pl0o?utm> Access: 02 February 2025.

D. Legal Reasoning

Various legal inferences can be drawn regarding the evolution of coercion in treaty law:

i. Before Westphalia, monarchs had broad treaty-making powers, often unrestricted by parliamentary oversight. Today, executive authority over treaties is subject to legislative approval, limiting unilateral decisions. As a result, the concept of coercion has expanded beyond cases involving captured leaders to include broader forms of state coercion. The shift away from absolutism, epitomized by Louis XIV's declaration, *L'état, c'est moi* ("I am the state"), gradually introduced the idea of state coercion into international law. This idea, however, gained only limited traction between World War I and World War II.[119]

ii. Until at least 1935, both state practice and dominant scholarly views defined coercion primarily as coercion of the representative or head of state. Treaties concluded without subsequent parliamentary approval were often deemed invalid. Peace treaties, however, were generally excluded from coercion-based invalidity claims, as they were considered essential for maintaining peace and security. For example, if a state supports the agreement it seeks to impose by issuing an ultimatum or by bombarding the opposing state, such actions are regarded as the victor's willingness to enforce the terms of peace -even if they exert indirect pressure on the representatives at the negotiating table- and are not considered grounds for invalidity or annulment.[120]

iii. The reluctance to recognize state coercion -as opposed to coercion of representatives or executives- before World War II stemmed from the belief that coercion did not fundamentally undermine the functioning of state organs. Peace treaties, in particular, were seen as products of realpolitik, reflecting geopolitical necessities rather than free consent. The League Assembly's interpretation of Article 19 of the Covenant reinforced this perspective, as it emphasized material or moral changes in treaties rather than their formal inequality. Article 19 was not intended to revise treaties perceived as unfair, but rather those that had become unenforceable. Additionally, concerns over the threat of renewed war and weak revision claims led to skepticism toward treaty modifications that could undermine compliance with foundational international treaties.[121]

iv. The 1938 Munich Agreement bears notable parallels to the Ukraine-Russia conflict. The citizenship rights violations that followed the agreement demonstrate that VCLT 52 applies beyond territorial integrity, encompassing broader legal consequences. This interpretation extends beyond the territorial focus of Article 2(4) of the UN Charter. Moreover, the invalidity of the Munich Agreement was determined not by an international tribunal but by a national court, as previously discussed.[122] The role of

[119]The rejection of Brazil's proposed amendment to the Covenant, which sought to invalidate all agreements concluded in violation of the 1921 Covenant's prohibition on aggression, exemplifies this. See Malawer (n 9) 50-51. Similarly, the 1935 Harvard Draft's restriction of treaty invalidation under duress to cases involving coercion against 'representatives' illustrates that the UN Charter and the 1969 VCLT subsequently introduced broader provisions.

[120]'Article 32. Duress' (n 10) 1154; de Jong (n 14) 222.

[121]Following the appeals by Bolivia and Peru to invalidate the agreements to which they were parties on the grounds of duress; the League Assembly was not compelled to revise these agreements. It decided that only a recommendation could be issued, provided that both material and moral justifications were presented. Malawer (n 9) 48-49.

[122]As an example, the Latvian Constitutional Court's invalidation of the approval given to the USSR occupation and the USSR's abandonment of the Brezhnev doctrine and the termination of the occupation of Czechoslovakia can also be taken into account. See Serena Forlati, 'Coercion as a Ground Affecting the Validity of Peace Treaties' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford Academic, Oxford University Press 2011) 323-324. In contrast, the Austrian Supreme Court has accepted the St. Germain Treaty as valid, even though it was dictated. See *Treaty of St. Germain (Yugoslav Liquidations) Case* [1934] Supreme Court of Austria 297-298.

[123]Benedetto Conforti and Angelo Labella, 'Invalidity and Termination of Treaties: The Role of National Courts' 1 European Journal of International Law 44, 51. See also Malawer (n 9) 152-154.

national courts[123] in such determinations highlights how political and military developments following a conflict directly shape treaty definitions and enforcement.

v. The expansion of coercion against a representative in the context of state consent is not based on the impairment of a state's will as a legal person, but rather on the principle that the consequences of war should not be legitimized in the legal order. This reflects the evolution of the prohibition of war, which originated in the League of Nations Covenant and later influenced post-war legal frameworks. However, granting states broad negotiating discretion in peace treaties does not justify wars; rather, it establishes a normative structure for peace that aligns with geopolitical realities. It is crucial to distinguish between two key concepts: when the doctrine of defective consent is applied to states, it often overlaps with the justification of the threat or use of force.[124] However, this is not a clear determinant, as not every unjustified threat or use of force necessarily affects treaty consent.

vi. Imposing absolute territorial boundaries in peace treaties that lack a realpolitik foundation raises questions about the validity of past and future peace treaties. Visscher (1960) argued that international legal mechanisms capable of definitively drawing such borders had not yet developed, and therefore, these borders should only be permissible to the extent that global order allows.[125] According to our study, VCLT 52 becomes applicable when coercion occurs not during war itself but during negotiations. In practice, coercion claims often arise in cases where the coercing state is not part of the negotiations, citing threats of force in the absence of direct armed conflict.[126] Claims of coercion invalidating a peace treaty are exceptionally rare,[127] and even in cases where peace treaties establish new legal statuses, they have not been accorded a distinct legal classification.[128] State practice and interwar legal scholarship demonstrate that there has been no shift in treaty law regarding the invalidity of imposed treaties.[129]

vii. The post-1945 international order played a critical role in the systematization of legal principles, but it did not alter the fundamental nature of global peace and security. State practice remained interest-driven, and VCLT 52 was never designed to regulate the establishment of political borders after 1945.[130] Despite the adoption of the UN Charter and the VCLT, peace and ceasefire treaties continued to be negotiated and implemented through state consent.

III. Theoretical Context

A. VCLT 52 vs. Realpolitik

Although Oppenheim identified customary law -grounded in "common consent"- as the basis of binding agreements in international law,[131] the legal vagueness of this concept has been widely criticized.[132] This

[124] de Jong (n 14) 233.

[125] Charles De Visscher, *Theory and Reality in Public International Law* (Corbett Translation 1968) 254.

[126] Forlati (n 122) 324-325.

[127] For instance see Askar Halwan Al-Enazy, '"The International Boundary Treaty" (Treaty of Jeddah) Concluded Between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12,2000' 96 American Journal of International Law 161 166-167.

[128] Forlati (n 122) 325.

[129] Malawer (n 9) 19.

[130] For examples of post-war border change agreements, see *Treaty on Recognition of India's Sovereignty over Goa, Daman, Diu, Dadra and Nagar Haveli (adopted 31 December 1974, entered into force 3 June 1975)* (1975) Article 1; *Agreement between the Government of the Republic of South Africa and the Government of the Republic of Namibia with respect to Walvis Bay and the off-shore Islands, Walvis Bay, 28 February 1994 (entered into force on 1 March 1994)* (1994) Article 2.

[131] Oppenheim (n 50) § 12.

[132] For example, Lauterpacht stated that "common consent" could not be a legal answer. de Jong (n 14) 213.

critique, developed by positivist jurists such as Jellinek and Triepel, shifted the focus toward state consent as the foundation of international obligations. Jellinek's concept of *Selbstverpflichtung* emphasized that binding force arises from the state's own will, while Triepel's *Gemeinwille* required the convergence of at least two states' wills.[133] This transition moved international agreements and law from an idealized or transcendent framework toward a realist vinculum juris model, rooted in state will.

This fundamental dichotomy can be traced back to Vitoria's reinterpretation of the traditional *ius gentium* as *ius inter gentes* within the Salamanca School.[134] In this context, the term "law of nations" reflects a natural law paradigm applied to states, whereas "international law" embodies a positivist approach, treating states as law-creating actors and supporting secular global governance.[135] While this perspective does not fully explain why states must comply with treaties,[136] it provides a pragmatic justification for sanctions imposed by other states in response to treaty violations. Consequently, international legal norms must be viewed as modifiable and *res inter alios acta* rather than universal and absolute. This perspective aligns international law more closely with political reality. Even Le Fur, who rooted international law in natural law, acknowledged the practical challenges of applying natural law-based responsibility in international relations.[137]

Historically, *pacta sund servanda* was an exceptional Roman legal principle, originally designed to enforce informal contracts outside *ius civile*. However, in modern international law, it has evolved into a broader normative foundation, compensating for the lack of an axiomatic legal framework.[138] The transcendental assumptions underlying this principle have led to idealized legal systematization, which paradoxically incentivizes violations[139] and disrupts the connection between law and political reality.

From a realpolitik perspective, the mechanism governing interstate relations differs from *pacta sund servanda*. Instead, it aligns with the concept of *raison d'État*, which prioritizes state sovereignty, survival, and strategic interests. For instance, Hegel evaluated treaty compliance in terms of state interests.[140] However, this raises an important question: Is acting in accordance with state interests merely a descriptive reality, or is it a normative necessity? If a state signs a peace treaty involving territorial concessions following an occupation, is its consent inherently invalid? While such a treaty may not be in the state's best interest, does that alone justify negating its consent?

From the perspective of this study, the concept of realpolitik should not be understood as a "law of the jungle" that inherently invalidates international agreements. Rather, it highlights the power dynamics underlying the formation of state wills, which serve as the foundation for treaties-recognized as primary sources of international law. These dynamics are central not only to the creation of agreements but also to their preservation and enforcement. Accordingly, the logically inconsistent interpretations of VCLT 52, discussed in the following section, should not override the influence of these power components. This influence is most visibly expressed in mechanisms such as the veto power within the UNSC. From this vantage

[133] Ibid 213-214.

[134] Antonio Truyol y Serra, *Histoire du droit international public* (Economica 1995) 51; Erkiner (n 13) 99.

[135] The interactive perspective that not only do actors create rules but also rules affect actors is advocated by constructivism. See Nicholas Onuf, "Constructivism: A User's Manual" in Vendulka Kubalkova, Nicholas Onuf and Paul Kowert (eds), International Relations in a Constructed World (Routledge 2015) 58-78.

[136] de Jong (n 14) 214.

[137] Ibid 215.

[138] Hakkı Hakan Erkiner and Abdulkadir Nacar, 'Strengthening Environmental Soft Law Commitments with the Principle of Pacta Sunt Servanda' 21 Galatasaray Üniversitesi Hukuk Fakültesi Dergisi 251.

[139] James Brierly, *The Law of Nations* (Clarendon Press 1963) 332.

[140] Georg Wilhelm Friedrich Hegel, *The Philosophy of Right* (Sümer Yayıncılık 2015) para. 330 ff.

point, realpolitik does not contradict the principle of *pacta sund servanda*; rather, it reflects the underlying will to create, uphold, and enforce legal commitments.

In order to understand the connection between realpolitik and the will to create law, it is necessary to touch upon how the behavior of states is modeled. Adam Smith's concept of the "rational man" is not rooted in deterministic self-interest, but rather in sympathy and bounded rationality: "*Sympathy, therefore, does not arise so much from the view of the passion, as from that of the situation which excites it.*"[141] This perspective underscores the importance of contextual judgment, rather than mechanistic reasoning. Accordingly, it would be inappropriate to deterministically define what Ukraine can or cannot agree to in a future peace settlement -except where peremptory norms such as those in VCLT 53 apply. Since the legal issue addressed by VCLT 52 concerns Ukraine's free will, the determination of coercion must be based not on the passions or relative power imbalances between Ukraine and Russia, but on concrete evidence from the circumstances of the negotiations. Extending the private law analogy, merchants are held to a higher standard of care -the prudent merchant standard- and are considered more responsible for their will than ordinary individuals. By analogy, states should bear greater responsibility for the consequences of their consent in peace treaties. This highlights the need to assess whether negotiations were conducted freely, rather than preemptively declaring all territorial concessions invalid. Furthermore, it underscores the necessity for state officials to exercise prudence in assessing threats or coercion in treaty-making. Otherwise, the very basis of *pacta sund servanda* would be undermined.

Measuring treaty invalidity solely based on the rationality of the victim state's will risks oversimplifying the nature of coercion. Marko Milanovic distinguishes between extortion and control as two forms of coercion.[142] In extortion, the victim state's will remains clear, but the oppressive state seeks to manipulate it through threats or inflicted harm. In control, the victim state is deprived of its ability to make independent decisions. Milanovic emphasizes that the defining element of coercion is not the specific intent of the oppressive state, but the extent of its influence over the victim state. He also introduces cyber coercion as a modern form of coercion as control[143] and advocates for a contextual, case-by-case assessment of coercion thresholds.[144]

Under this framework, extortion cripples the victim's will, whereas control assimilates the victim's will into the oppressor's own. In the Ukraine-Russia war, depending on the scope of interpretation, one could argue that Ukraine is subject to U.S. control while being extorted by Russia. However, in resolving a conflict that the United Nations Security Council (UNSC) has failed to address, priority should be given not to Ukraine's abstract will but to peace negotiations grounded in geopolitical realities. A critical distinction here is that the claim that Putin would demand more concessions if any were granted[145] is a political assertion rather than a legal one.[146]

Another dimension of coercion is economic coercion. The 1932 Salem arbitration did not invalidate a treaty signed under economic coercion,[147] yet capitulations granting commercial and legal privileges, which

[141] Adam Smith and Dugald Stewart, *The Theory of Moral Sentiments: Or, An Essay Towards an Analysis of the Principles* (Wells and Lilly 1817) 7.

[142] Marko Milanovic, 'Revisiting Coercion as an Element of Prohibited Intervention in International Law' 117 American Journal of International Law 601.

[143] Ibid 617-620.

[144] Ibid 632-640.

[145] For this assessment of the sources in Brussels, see Güven Özalp, 'ABD tek taraflı Ukrayna planını açıkladı, Avrupa şimdi ne yapacak?' BBC Turkish <https://www.bbc.com/turkce/articles/ce8jrv6z6r2o> Access: 29 October 2025.

[146] For instance see Stephen Collinson, 'US relations with Europe will never be the same after Trump's call with Putin' CNN <https://edition.cnn.com/2025/02/13/politics/us-european-relations-trump-putin-analysis/index.html> Access: 29 October 2025.

[147] *Salem Case* (*United States v. Egypt*) [1932] (R. Int'l Arb. Awards) 1194.

severely weakened the Ottoman Empire, illustrate how economic coercion can have lasting consequences. The Ottoman Empire first granted these privileges to France in 1536 as a strategic move to counterbalance European powers but later became heavily dependent on European economies. Efforts to abolish these privileges in 1815 and 1839 were rejected, and they remained in effect until explicitly revoked by the 1923 Lausanne Peace Treaty.[148]

Similarly, the 1867 sale of Alaska to the U.S. is a striking example of how economic difficulties, rather than military force, dictated territorial transfers. Facing post-war financial strain and declining economic returns from Alaska, Russia saw the sale as a practical solution to reduce costs and geopolitical risks.[149] Therefore, an international legal norm protecting states from coercion should not be restricted to territorial transfers alone. In a world where economic sanctions are increasingly used as instruments of warfare,[150] defining coercion solely in military terms ignores key factors that shape state decision-making, particularly from a TWAIL perspective.[151]

The relationship between VCLT 52 and realpolitik presents a paradox. If a state forced into a treaty later challenges its validity when power dynamics shift, it may appear consistent with realpolitik. However, arguing that the political and economic conditions leading to a treaty constitute coercion fundamentally undermines realpolitik itself. While the former aligns with power-based diplomacy, the revision of treaties based on changing power balances must adhere to legal procedures prescribed by international law. By contrast, the latter challenges the premise of realpolitik entirely and is legally untenable.

VCLT 52 recognizes coercion in various forms, but the invalidation or revision of treaties coerced under such conditions must be reinforced by shifts in power dynamics. In reality, no state can impose absolute dominance indefinitely, meaning that any conflict-ending treaty will inevitably involve mutual concessions.

B. Coercion as Form vs. Coercion as Content in Treaties

"*If VCLT 52 refers to UN Charter Article 2(4), which in turn refers to territorial integrity, then the scope of VCLT 52 is limited to situations involving territorial transfer*."[152] While this interpretation may appear correct, it fails to distinguish between content and form -a fundamental principle in treaty interpretation.

If we assume that VCLT 52 categorically prohibits territorial transfer treaties following armed conflicts, such as the Russia-Ukraine war, we arrive at an absurd conclusion. This inference lacks both historical precedent and logical coherence. According to the ILC, VCLT 45 does not apply to cases governed by VCLT 52, unless the content of the invalid treaty is incorporated into a subsequent treaty.[153] The implication is that VCLT 52 establishes a formal limitation on treaty validity rather than a content-based restriction on state consent.[154]

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[148] Cengiz Kallek, *İmtiyazat* TDV İslâm Ansiklopedisi (TDV İslâm Araştırmaları Merkezi 2000) <https://islamansiklopedisi.org.tr/imtiyazat> Access: 29 October 2025.

[149] The Editors of Encyclopaedia Britannica, *Alaska Purchase* (2025) <https://www.britannica.com/event/Alaska-Purchase> Access: 29 October 2025.

[150] See Nicholas Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale University Press 2022).

[151] Harold Bertot Triana, 'A customary rule against unilateral economic sanctions of the nature of the Helms-Burton Act? Regarding another (potential) vote in the United Nations General Assembly against the "bloqueo"' EJIL Talk <https://www.ejiltalk.org/a-customary-rule-against-unilateral-economic-sanctions-of-the-nature-of-the-helms-burton-act-regarding-another-potential-vote-in-the-united-nations-general-assembly-against-the-bloqueo/> Access: 29 October 2025; Guilherme Del Negro, 'The Validity of Treaties Concluded under Coercion of the State : Sketching a TWAIL Critique' 10 European Journal of Legal Studies 39.

[152] Hyde brought up the issue that the belligerent's right to impose territory transfer could be limited. However, he also stated that this claim could undermine compliance with the agreements. Contrary to the above comment, what prevents the imposition of territory transfer is not the prohibition of coercion, but the "fortunes of war" as in the Brest-Litovsk example. See Charles Cheney Hyde, *International Law, Chiefly as Interpreted and Applied by the United States* (Little, Brown 1945) 1380; Malawer (n 9) 23.

[153] ILC, *Report on the work of its eighteenth session* (YILC, 1966) para. 6; Forlati (n 122) 326.

[154] Annalisa Ciampi, 'Invalidity and Termination of Treaties and Rules of Procedure' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford Academic, Oxford University Press 2011) 372.

The distinction between form and content is crucial in both verbal logic and hermeneutics, as it underpins analysis and interpretation. In verbal logic, form pertains to the structural relationships between propositions, ensuring logical consistency, whereas content concerns the substantive subject matter of an argument. Applied to treaty law, procedural factors affecting consent formation -such as coercion in negotiation- constitute form, whereas the substantive provisions of the treaty itself define its content.

Thus, the correct and incorrect interpretations of VCLT 52 can be summarized as follows:

Correct interpretation of coercion in VCLT 52:

i. *CF (Coercion as Form) → N (Negotiation Stage)*: Coercion must occur during the negotiation process to invalidate a treaty.

ii. *CF ⟺ MC (Manipulation of Consent)*: For coercion to invalidate a treaty, it must have a convergent and substantial effect on the state's consent.

iii. *MC → (E ∨ M ∨ O)*: Manipulation of consent includes economic, military and other types of coercion.

iv. *W (War) → ¬CF (No Coercion)*: VCLT 52 coercion is not assumed simply because war conditions exist. Otherwise, any terms of a treaty ending the war could be claimed as invalid on the basis of VCLT 52.

v. *Therefore: W ∧ T (Treaty Signed) ⟶ Validity of T unless proven CF*: A treaty signed during war is valid unless coercion as manipulation of consent is demonstrated.

Incorrect interpretation of coercion in VCLT 52:

i. *VCLT 52 ⟺ UNC 2(4)*: VCLT 52 is equivalent to UN Charter 2(4).

ii. *UNC 2(4) ⟺ TI (Territorial Integrity)*: UN Charter 2(4) is equated with territorial integrity.

iii. *TT (Territory Transfer) → Tvoid*: Post-war territorial transfer is *ipso facto* invalidated by VCLT 52.

Positioning the threat or use of force as a *jus cogens* violation necessitates consideration of VCLT Article 53. In discussions on the existence of *jus cogens* norms, which impose limitations on states' freedom to contract, the ILC cited the prohibition of the use of force as evidence of *jus cogens* status.[155] It was further noted that if a treaty provision is deemed *jus cogens*, this could raise questions about the validity of other treaties containing violations of that provision, while also clarifying that such violations do not result in ipso facto invalidity.

Crucially, the *jus cogens* nature of a provision is a matter of content, not form.[156] Unlike VCLT 52, which concerns treaties concluded under coercion, VCLT 53 addresses treaties that include provisions violating UN Charter Article 2(4), such as the use of force. Ultimately, the ILC underscored that the invalidity framework for *jus cogens* violations is designed to reinforce the requirement that states resolve disputes through peaceful means, as outlined in UN Charter Article 33.[157]

The formal nature of coercion under VCLT 52 means that the provision does not impose any restrictions on the content of the relevant treaty. Consequently, the application of VCLT 52 does not depend on the substantive terms of a treaty.[158] However, there is an indirect relationship between form and content: treaties concluded under coercion often contain disproportionate obligations imposed on the coerced party. Some scholars have thus suggested a "reverse engineering" approach, where coercion is inferred from the treaty's content.[159]

[155] *United Nations Conference on Law of Treaties First and second sessions Vienna, 26 March-24 May 1968 and 9 April-22 May 1969* 67, para. 1.

[156] Ibid 67, para. 2.

[157] Ibid 68, para. 5.

[158] This fact excludes an application of VCLT 52 limited to "territorial transfer" as expressed in the title of this study.

[159] de Jong (n 14) 234 ff.

Particularly, scholars from socialist and neutral states have drawn on private law analogies, invoking the doctrine of *laesio enormis* -a principle in Roman law that allowed the rescission of contracts where the agreed price was less than half the fair market value.[160] This doctrine, which restricts not only contractual freedom but also market dynamics, has not been widely accepted in international law. Grotius, Vattel, Wolff, and Pufendorf rejected the notion that treaty invalidity could be based on an imbalance of rights and obligations.[161] Later scholars reinforced this stance;[162] for instance, Bernard cited the Peace of Tilsit to argue that inequality in a treaty does not inherently indicate coercion.[163]

The ICJ has never engaged in cost-benefit analyses of treaties, apart from cases concerning equitable compensation. Recognizing inequality as grounds for treaty invalidation would undermine treaty compliance and create an unfounded basis for intervention in interstate relations. Furthermore, disproportionate terms in a treaty do not ipso facto indicate coercion. Thus, coercion cannot be inferred solely from the content of a treaty, making such an approach inapplicable in international law.

VCLT 52 only concerns the formal process of treaty-making, without imposing content-based restrictions. VCLT 53, by contrast, specifies substantive limitations on treaties. Under VCLT 53, a treaty mandating genocide or one that permits a state to occupy another state in violation of UN Charter Article 2(4) would be invalid due to its content. However, territorial settlements in post-conflict peace treaties do not constitute *jus cogens* violations but rather *erga omnes* border agreements. Were sovereignty transfers inherently prohibited, numerous treaties -such as the 1867 Alaska Purchase between the U.S. and Russia- would be considered invalid, an assertion that lacks legal precedent.

Thus, territorial transfers or border adjustments do not violate VCLT 53 per se. VCLT 52, meanwhile, applies strictly to the treaty-making process and does not establish substantive limitations. This distinction is particularly relevant, as a state may coerce another into a territory transfer treaty, enforce excessive reparations,[164] or impose economic and legal constraints through capitulations.[165] However, such provisions alone do not constitute coercion under VCLT 52.

Nonetheless, Grotius, Pufendorf, Wolff, and Vattel recognized an exception for treaties that threaten the survival of a nation.[166] This natural law perspective assumes sovereignty to be absolute, inalienable, and non-renounceable.[167] Positivist jurists rejected both this characterization of sovereignty and the subordination of positive law to natural law.[168] Contemporary concepts of sovereignty increasingly focus on human rights, prioritizing individual rights over state rights. Accordingly, the ILC has framed *jus cogens* norms within

[160] Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford University Press 1996) 259 ff.

[161] Grotius (n 12) L. II, ch. XV, para. 7; Vattel (n 17) L. II, ch. XII, para. 158; Christian Wolff, *Jus gentium methodo scientifica pertractatum* (trans Joseph H Drake, Clarendon Press 1934) para. 405; Samuel von Pufendorf, *De Jure Naturae Et Gentium Libri Octo* (William S. Hein, Incorporated 1995) L. VIII, ch. IX, para. 4.

[162] de Jong (n 14) 235. See also Cornelius Murphy, 'Economic Duress and Unequal Treaties' 11 Virginia Journal of International Law 51-69.

[163] Montague Bernard, *Four Lectures on Subjects Connected with Diplomacy* (Macmillan 1868) 185; Malawer (n 9) 17; Béla Vitanyi, *Les positions doctrinales concernant le sens de la notion de "Principes généraux de droit reconnus par les nations civilisées"* (Pédone 1982) 48-116; de Jong (n 14) 236. See also Ulrich Scheuner, 'Conflict of Treaty Provisions with a Peremptory Norm of General International Law and its Consequences: Comments on Arts. 50, 61 and 67 of the ILC's 1966 Draft Articles on the Law of Treaties' 520 522-523; *Salem Case* (*United States v. Egypt*) [1932] (R. Int'l Arb. Awards) 1194.

[164] See Treaty of Nanking (1842) Article 3.

[165] See Treaty of Balta Liman (1838) Article 1.

[166] de Jong (n 14) 238.

[167] Ibid 238.

[168] Ibid 239. Since this study examines the question of transferring sovereignty over a certain territory in Ukraine, it is clear that there is no situation that could lead to the destruction of a nation.

the framework of international criminal law.[169] Because the *jus cogens* framework established by the ILC in 2022 encompasses acts with direct equivalents in international criminal law -excluding the right to self-determination. While self-determination is linked to political rights, the prohibition of force derives not from sovereignty's absoluteness,[170] but from sovereign equality and international peace and security principles.

Ultimately, VCLT 52 governs the manner in which treaties are concluded. The following section will analyze the application of VCLT 52 in the context of the Ukraine-Russia war.

IV. VCLT 52 and the Prospected Ukraine-Russia Peace Treaty

A. Facts

Russia is among the first states in the history of international treaty law to unilaterally annul an "imposed" treaty. The 1856 treaty neutralizing the Black Sea was later revised through a multilateral treaty initiated by the Tsarist Government.[171] While Tsarist Russia was often on the receiving end of imposed treaties, it also imposed treaties on other states.[172] Besides, the USSR declared the Russian-Persian Friendship Agreement invalid, arguing that it was signed without Iran's genuine consent and was an illegitimate act of the Tsarist regime.[173] Similarly, the USSR annulled its capitulation agreement with Turkey, citing its imposed nature. Despite inconsistencies[174] in Soviet treaty policy, its legal doctrine generally rejected the validity of coerced treaties.[175]

The dissolution of the Soviet Union marked a turning point in NATO-Russia relations. Despite informal assurances[176] reportedly given by then-U.S. Secretary of State James Baker and the 1997 NATO-Russia Founding Act,[177] NATO's eastward expansion continued, heightening Moscow's strategic concerns.[178] Russia viewed NATO's enlargement as a direct threat to its sphere of influence, prompting a series of military interventions to reassert control over neighboring regions. In 2008, Russia intervened in Georgia, and in 2014, following the Euromaidan protests that led to a pro-Western government in Ukraine, Russia annexed Crimea. It also provided military and logistical support to separatist forces in the Donbas region.

Ukraine's pursuit of NATO membership further escalated tensions, culminating in Russia's full-scale invasion in February 2022. The Western response was swift and severe: approximately $300 billion in Russian assets were frozen, energy imports and technology transfers were restricted, diplomatic isolation measures were enforced, and sanctions were imposed to deter third-party compliance with Russia.[179]

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[169] International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens) with Commentaries* (Yearbook of International Law Commission 2022) 16.

[170] In international law, the state's qualities such as maintaining public order, defending against foreign attacks, looking after the physical and mental well-being of its citizens and protecting its citizens abroad are duties rather than fundamental sovereign rights.

[171] Malawer (n 9) 31.

[172] For example, Sino-Soviet border agreements were historically established through impositions by the parties on each other. Ibid 100.

[173] Ibid 31.

[174] The 1968 Soviet-Czechoslovak Treaty was established by military action by Soviet and Warsaw Pact forces and was not recognized by Western states and China. The USSR defended this intervention and the treaty as lawful within the context of socialist international law. Ibid 99-100.

[175] Ibid 33. For the views of Soviet theorists in this direction, see Ibid 94-99.

[176] <https://nsarchive.gwu.edu/briefing-book/russia-programs/2017-12-12/nato-expansion-what-gorbachev-heard-western-leaders-early> Access: 08 February 2025.

[177] <https://nsarchive.gwu.edu/briefing-book/nato-75-russia-programs/2024-07-09/nato-russia-charter-1997-was-forced-step-said> Access: 08 February 2025.

[178] Mikhail Polianskii, 'Russian Foreign Policy Research and War in Ukraine: Old Answers to New Questions?' 57 Communist and Post-Communist Studies 156.

[179] Rita Floyd and Mark Webber, 'Making amends: emotions and the western response to Russia's invasion of Ukraine' 100 International Affairs 1149.

Russia justified its territorial claims by invoking the "Russkiy Mir" doctrine, which asserts Moscow's responsibility to protect Russian-speaking and ethnic Russian populations in neighboring states. Additionally, self-determination under international law has been central to Russia's legal arguments. Following the seizure of government buildings in Crimea by pro-Russian forces, a referendum was held under Russian military presence, with over 90% reportedly voting to join Russia. The Supreme Council of Crimea approved the annexation, which was formalized by Putin on March 18, 2014.[180] However, UN General Assembly Resolution 68/262 deemed the referendum illegal, and the annexation was widely unrecognized. Similarly, referendums in Donetsk, Luhansk, Kherson, and Zaporizhzhia were declared illegal by the UNGA in Eleventh Emergency Special Session, 13th & 14th Meetings GA/12458.[181]

On the legal front, Ukraine filed a case before the ICJ, challenging Russia's justification for the invasion based on alleged acts of genocide in Donetsk and Luhansk. While the ICJ issued a provisional order on March 16, 2022, instructing Russia to suspend military operations,[182] enforcement was blocked due to Russia's veto power in the UN Security Council under Article 94 of the UN Charter.

During the early stages of the war, negotiations held in Istanbul yielded progress on a formula that included:

i. Ukraine renouncing NATO membership
ii. Russian being recognized as a second official language
iii. Ukraine adopting a neutral status under NATO Article 5-like guarantees
iv. A 15-year consultation process for Crimea
v. The withdrawal of Russian forces to pre-invasion positions[183]

Russian officials later claimed that the agreements reached in Istanbul in April 2022 were not implemented due to UK influence. Foreign Minister Sergey Lavrov, in an interview, stated that the March 29, 2022, agreements negotiated in Istanbul could have served as a settlement basis.[184] In a statement on April 4, 2024, Lavrov again alleged that the Istanbul negotiations were undermined by external influences, particularly the UK, which persuaded Ukraine to abandon the process.[185]

Following his election as the 47th U.S. President, Donald Trump has pursued a policy of economic pressure on Russia to force a settlement.[186] Reports suggest that Trump proposed a ceasefire by April 20,

[180] *Agreement between the Russian Federation and the Republic of Crimea on the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Constituent Entities within the Russian Federation of March 18, 2014* .

[181] <https://press.un.org/en/2022/ga12458.doc.htm> Access: 29 October 2025.

[182] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia Federation)* International Court of Justice, Provisional Measures, Order of 16 March 2022, ICJ Rep 211.

[183] Reuters, 'Ukraine offers neutrality in exchange for NATO-style security guarantees at Russia talks' Reuters <https://www.reuters.com/world/europe/ukraine-offers-neutrality-exchange-nato-style-security-guarantees-russia-talks-2022-03-29/> ; Ukrainska Pravda, 'Lukashenko says Russia and Ukraine could have agreed on "leasing" Crimea' Ukrainska Pravda <https://www.pravda.com.ua/eng/news/2023/06/14/7406819/> Access: 08 February 2025.

[184] "Foreign Minister Sergey Lavrov's interview to American Newsweek Magazine" (Ministry of Foreign Affairs of the Russian Federation, 7 October 2024) <https://mid.ru/en/foreign_policy/rso/nato/1974612/> Access: 08 February 2025.

[185] "Foreign Minister Sergey Lavrov's statement and answers to media questions following the embassy round table discussion to settle the situation around Ukraine, Moscow" (Ministry of Foreign Affairs of the Russian Federation, 4 April 2024) <https://mid.ru/en/foreign_policy/rso/1942589/> Access: 08 February 2025.

[186] Rob Crilly, 'Trump sends threat to Putin to end war in Ukraine' DailyMail <https://www.dailymail.co.uk/news/article-14313839/Donald-trump-putin-russia-sanctions-deal-ukraine.html> Access: 08 February 2025.

[187] Perkin Amalaraj, ''Trump peace plan for Ukraine' is 'leaked': Talks with Putin, ceasefire by Easter and an end to Zelensky's NATO dream among details in report' DailyMail <https://www.dailymail.co.uk/news/article-14367923/Trump-peace-plan-Ukraine-Putin-ceasefire-Easter-Zelensky-NATO.html> Access: 08 February 2025.

2025, with Ukraine renouncing NATO membership,[187] though this proposal was initially rejected by Ukrainian authorities.[188]

B. *Ab Initio* Invalidity of a Peace Treaty That Does Not Exist?

Reports suggest that Donald Trump, elected as the 47th President of the United States, is working on a solution that may include recognizing Russia's territorial gains in Ukraine.[189] While Trump's proposal does not explicitly endorse Russia's annexation of 20% of Ukrainian territory, legal scholars have already debated whether a peace treaty involving territorial transfer would be invalid *ab initio* under VCLT 52.[190] Philipp Kehl has argued that such a treaty would be inherently void, raising fundamental questions about treaty law, territorial sovereignty, and the principle of *pacta sund servanda*.

Kehl broadly asserts that any unequal treaty in the post-1945 order is invalid *ab initio*. However, if a rule that allegedly emerged in 1945 is said to have overturned foundational principles of international law -such as *pacta sund servanda*, border agreements, peace treaties, and the use of force- it presents both theoretical and practical problems. First, no international agreement establishes the invalidity of unequal treaties. Second, the sudden emergence of a customary rule is technically implausible.[191] The principle of *laesio enormis* or the doctrine of undue influence -which might justify invalidating treaties on fairness grounds- has never been a recognized general principle in international law, either before or after 1945. The ICJ has never invalidated a treaty based on cost-benefit analysis or considerations of fairness that override *pacta sund servanda*.[192]

Kehl supports his position by referencing violations of UN Charter Article 2(4), asserting that VCLT 52 applies to both states involved. While the UN General Assembly's condemnation of Russia's invasion[193] and the violation of Ukraine's territorial integrity highlight a breach of UN Charter 2(4), the application of VCLT 52 remains a distinct issue. As established, VCLT 52 addresses coercion in form rather than content. If every treaty signed following a violation of UN Charter 2(4) were automatically invalid, this would lead to an untenable legal conclusion. To avoid this, Kehl narrows the scope of VCLT 52 to apply only to treaties involving territorial transfer. Gregory Fox supports this view, arguing that VCLT 52's application should be interpreted in light of UN Charter 2(4)'s emphasis on territorial integrity, given the absence of a special legal regime for peace treaties.[194]

However, this interpretation is problematic. Coercion in form can apply to any treaty provision, not just territorial changes. If VCLT 52 only applied to territorial treaties, then a treaty requiring Ukraine to pay disproportionate compensation to Russia would not be covered, despite being equally coercive. There is no legal or theoretical basis for restricting VCLT 52's scope to territorial provisions alone.

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[188] Perkin Amalaraj, 'Kyiv says 'we are very near to really ending this war by a just and lasting peace' as Ukrainians react with horror to 'leaked report' on pro-Russian website claiming to reveal Trump's plan for a ceasefire by Easter' DailyMail <https://www.dailymail.co.uk/news/article-14371607/Ukraine-leaked-report-Trump-ceasefire-Easter.html> Access: 08 February 2025.

[189] Alexander Ward, 'Trump Promised to End the War in Ukraine. Now He Must Decide How' The Wall Street Journal <https://www.wsj.com/world/trump-presidency-ukraine-russia-war-plans-008655c0> ; Alisa Orlova, 'WSJ: Trump Team Proposes 20-Year Freeze on Ukraine's NATO Bid in Exchange for Peace' Kyiv Post <https://www.kyivpost.com/post/41884> Access: 08 February 2025.

[190] Philipp Kehl, 'Treaty or No Treaty? – International Law and the Purported Trump Peace Proposal for Ukraine' EJIL Talk <https://www.ejiltalk.org/treaty-or-no-treaty-international-law-and-the-purported-trump-peace-proposal-for-ukraine/> Access: 08 February 2025.

[191] Response of the Republic of Singapore to the International Law Commission's Request for Comments and Observations on the Draft Conclusions on Identification of Customary International Law <https://legal.un.org/ilc/sessions/70/pdfs/english/icil_singapore.pdf> Access: 23 January 2025.

[192] Detailed information on ICJ standards is provided in the next subheading.

[193] UNGA A/ES-11/L.1.

[194] Gregory Fox, 'A Legal Framework for a Russia-Ukraine Peace Agreement' EJIL Talk <https://www.ejiltalk.org/a-legal-framework-for-a-russia-ukraine-peace-agreement/> Access: 08 February 2025.

Above all, this debate concerns a hypothetical peace treaty between Ukraine and Russia. What matters is whether such a treaty reflects the genuine consent of both parties, as enshrined in Article 36 of the ICJ Statute. This consent, once given, becomes a source of international law, binding the parties under *pacta sund servanda*. The key legal question is not whether Ukraine could ever agree to territorial concessions, but whether such a treaty would reflect its free will. Declaring a non-existent peace treaty invalid *ab initio* assumes an absolute impossibility of Ukrainian consent, which lacks historical, theoretical, or practical foundation.

A treaty involving the transfer of territory should not be evaluated on the presumption that it does not reflect Ukraine's free will, but rather on the presumption that it does. Once a treaty is concluded, the principle of *pacta sund servanda* becomes the primary rule governing its application. It is important to note that the ICJ has never employed a cost-benefit analysis based solely on the imbalance of performance within a treaty to demonstrate a lack of free will. Indeed, the *iustum pretium* approach-which requires such an analysis and is reminiscent of communist economic thought-is incompatible with both the acquis and the current operation of international law.[195] It is important to note that the 2011 Draft Articles on the Effects of Armed Conflicts on Treaties focused not on restrictions concerning treaties that end wars, but rather on the consequences of existing treaties during armed conflict. In fact, the issue of preventing an aggressor state from benefiting was addressed within the framework of existing treaties through provisions on termination, withdrawal, and suspension.[196] Furthermore, it must be reiterated that state representatives signing such treaties are presumed to exercise at least the level of discretion expected of a "prudent merchant." The next section will examine the ICJ's standard for identifying manipulation of will, drawing on concrete evidence from the negotiation process.

As set out below, ICJ jurisprudence demonstrates that the validity of a treaty under VCLT 52 must be assessed by examining whether coercion at the negotiation stage undermined the genuine will of the parties.[197] Preemptively defining how Ukraine's consent should manifest -beyond procedural and negotiation-based standards- relies on a deterministic rational actor model that has no precedent in international law. Furthermore, imposing such *ex ante* legal restrictions on a conflict the UNSC has failed to resolve risks politicizing treaty law rather than ensuring legal consistency.

C. Limits of VCLT 52 in the Prospected Ukraine-Russia Peace Treaty

i. *Customary Law Status of VCLT 52*: VCLT 52 addresses the impact of the use of force on treaty law, one of the most contentious issues in international law. While doctrinal views on this issue vary, the article (Article 49 of the draft) was adopted without a single negative vote.[198] The abstaining states did not object to the article itself but expressed concerns about its potential to destabilize treaty compliance.[199]

[195] In addition to the transfer of sovereignty inherent in territorial treaties, the doctrine of crippling compensation has emerged in relation to monetary reparations. Article 42(3) of the 1996 ILC Draft Articles stated that compensation must not deprive the population of a State of its means of subsistence. However, influenced by Crawford's Third Report, the 2001 ARSIWA introduced a principle of proportionality that excludes purely indirect and remote damages. The issue of crippling compensation was thus reframed as a matter of payment terms and modalities. See: Martins Paparinskis, 'Crippling Compensation in the Law of State Responsibility' EJIL Talk <https://www.ejiltalk.org/crippling-compensation-in-the-law-of-state-responsibility/> Access: 08 February 2025. This doctrine, regarded as a narrow exception, may have legal relevance in the context of a potential Ukraine-Russia peace treaty, particularly in relation to the principle of proportionality. If not expressly addressed in the peace settlement, such an exception could potentially be invoked with respect to Ukraine's natural resources or its Black Sea coastline.

[196] International Law Commission, *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries* (2011) Article 15.

[197] For example, in the Fisheries cases, the completion of procedures such as the exchange of notes during the preparation of the agreement prevented the acceptability of the coercion put forward by the parties for the purpose of invalidity. See *Fisheries Jurisdiction Case* (*Federal Republic of Germany v. Iceland*) (Judgment) [1973] ICJ Rep 4, para. 24; *Fisheries Jurisdiction Case* (*United Kingdom and Northern Ireland v. Iceland*) (Judgment) [1973] ICJ Rep 4, para. 24.

[198] Forlati (n 122) 320.

[199] Ibid 321.

However, the broad consensus during the VCLT vote does not, in itself, establish the article's status as customary international law.

The formation of customary law requires general state practice,[200] which VCLT 52 lacks particularly concerning peace treaties, as demonstrated in case studies. Furthermore, customary law must be supported by *opinio juris*, meaning that states must adhere to the rule with the belief that it is legally binding.[201] The immediate acceptance of VCLT 52 in the voting process does not equate to a binding customary norm.[202] Instead, customary law emerges through a tested theory-practice consensus, integrating both objective and subjective elements.[203]

ii. *Legal Justifications*: Russia and Ukraine advance competing legal arguments to justify their positions. Ukraine rightfully asserts that Russia has violated UN Charter Article 2(4). While there is no definitive ICJ ruling or binding UNSC resolution on the matter, the UN General Assembly's condemnation reflects a broad international consensus.

Conversely, Russia bases its claims on historical precedents, emphasizing NATO's expansion and the right to self-determination. This reliance on historical justifications for territorial aggression risks leading to an infinite *Regress* -a problem well recognized in legal and philosophical reasoning. To resolve such disputes, philosophical methods like Foundationalism[204] -establishing certain legal norms as axioms- and Hume's is-ought problem[205] -rejecting the derivation of norms from historical facts alone- offer structured approaches.

Ultimately, any resolution must align with UN Charter Article 33, which prioritizes peaceful dispute settlement. Legal interpretations should support diplomatic solutions rather than perpetuate historical grievances as justification for present conflicts.

iii. *The Relationship Between VCLT 52 and UN Charter 2(4)*: While the ILC does not establish a clear causal relationship between VCLT 52 and UN Charter Article 2(4),[206] its adoption of the "not too remote" principle in determining state responsibility.[207] According to this approach, the conditions that led states to the negotiation table should not be retrospectively analyzed; rather, the key issue is whether the state's will was manipulated at the negotiation stage. Thus, VCLT 52 does not concern the broader components of state consent but specifically its manipulation.

The qualitative threshold for coercion under VCLT 52 must be "substantial" enough to affect the decision to enter into a treaty, similar to the *rebus sic stantibus* doctrine.[208] Not every violation of UN Charter Article 2(4) necessarily invalidates a treaty under VCLT 52. Bothe has argued that a specific causal link must be

[200] International Law Commission, *Draft Conclusions on Identification of Customary International Law with Commentaries* (Yearbook of the International Law Commission 2018) 135-138.

[201] *The Case of the SS Lotus*, (*France v Turkey*) [1927] PCIJ No. 10. paras. 67-68.

[202] For the statement "There is no such thing as instant custom" see <https://legal.un.org/ilc/sessions/70/pdfs/english/icil_singapore.pdf> Access: 23 January 2025.

[203] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006) 410-411.

[204] Ali Hasan and Richard Fumerton, 'Foundationalist Theories of Epistemic Justification' The Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/archives/fall2022/entries/justep-foundational/> Access: 27 October 2025.

[205] A. C. MacIntyre, 'Hume on "Is" and "Ought"' 68 The Philosophical Review 451.

[206] Dörr and Schmalenbach (n 22) Article 52, para. 20.

[207] Ibid Article 52, para. 22.

[208] The doctrine of *rebus sic stantibus* allows for the termination or suspension of a treaty when a fundamental change of circumstances, unforeseen by the parties, radically transforms the extent of obligations still to be performed. The ICJ reaffirmed the restrictive application of this principle in the *Gabcíkovo-Nagymaros* Project case, emphasizing that such a change must be both essential to the consent of the parties and genuinely unforeseen. See *Case Concerning Gabčíkovo- Nagymaros Project* (*Hungary v. Slovakia*) (Judgment) [1997] ICJ Rep 7 paras. 104-112.

[209] Michael Bothe, 'Consequences of the Prohibition of the Use of Force-Comments on Arts. 49 and 70 of the ILC's 1966 Draft Articles on the Law of Treaties' 27 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 513.

established between a violation of Article 2(4) and the coercion required for VCLT 52 to apply.[209] Without such a link, VCLT 52 ceases to function as a treaty law provision.[210]

The absence of a *praejudicium* (prejudgment) relationship between VCLT 52 and UN Charter 2(4) also implies that VCLT 52 can apply without a definitive ruling on an Article 2(4) violation. Sir Ian Sinclair emphasized that the automatic result of coercion or the threat of force is not treaty invalidity but, rather, internationally wrongful act responsibility.[211] Citing Fitzmaurice, Sinclair distinguished between state consent and the threat or use of force, highlighting the unique characteristics of peace treaties, lawful coercion, and the creation of obligations.[212]

For instance, economic coercion may fall within the scope of VCLT 52 not because it is inherently unlawful, but because it results in a treaty that exploits a weaker party's position, granting the stronger party advantages it would not otherwise obtain.[213] This interpretation underscores the "essential" impact of coercion on the consent to the treaty.

While VCLT 52 is directly linked to Article 2(4) of the UN Charter, in specific cases, their relationship should be assessed based on whether the coercion affected the consent to the treaty. Importantly, VCLT 52 does not impose content-based restrictions on treaties, nor does it limit coercion to military forms. This broad scope allows the ICJ to assess, on a case-by-case basis, the extent to which consent was undermined by coercion, providing a flexible but rigorous framework for treaty evaluation.

iv. *ICJ Standards*: Under VCLT 52, the ICJ has acknowledged the invalidity of treaties concluded under the threat or use of force with "little doubt".[214] However, while the ICJ has accepted this principle in theory, it has not applied VCLT 52 in cases where violations of UN Charter Article 2(4) or the principle of non-intervention were found.

For instance, in Nicaragua v. Colombia, Nicaragua argued that the 1928 treaty it signed with Colombia was invalid due to coercion. However, the ICJ dismissed Nicaragua's claim without addressing the coercion argument.[215] Similarly, in Armed Activities on the Territory of the Congo, the ICJ did not examine coercion claims against the Lusaka Ceasefire Agreement, despite Uganda's occupation of Congolese territory. Instead, the Court treated the agreement as valid.[216] The ICJ's decision not to address a party's claim of invalidity on the grounds of coercion does not imply that such claims are inadmissible; rather, it reflects the Court's judgment that the claim was not legally relevant in that specific context. The absence of any ICJ case directly challenging the validity of territorial agreements concluded after armed conflict is particularly significant for the present discussion. As previously noted under the rubric of realpolitik, the legal framework shaped by the will to create and preserve agreements aligns with political and legal realities. What is sustainable in international law is precisely this alignment between normative order and geopolitical context. The examples cited earlier under state practice support this conclusion. Thus, it can be affirmed that international legal practice, doctrine, and jurisprudence do not establish any categorical prohibition on territorial transfer resulting from armed conflict.

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[210] Brierly, *The Law of Nations* (n 139) 319; Craven (n 15) 129.

[211] Sir Ian McTaggart Sinclair, *The Vienna Convention on the Law of Treaties* (Manchester University Press 1984) 180; Craven (n 15) 130.

[212] Craven (n 15) 131.

[213] Verhoeven (n 54) 304-305.

[214] *Fisheries Jurisdiction Case* (*Federal Republic of Germany v. Iceland*) (Judgment) [1973] ICJ Rep 4 para. 24.

[215] *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections* ICJ para. 80; Forlati (n 122) 323.

[216] *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Uganda*) (Judgment) [2005] ICJ Rep 168, para. 37; Forlati (n 122) 326.

As noted above, inequality and coercion in the law of treaties are not necessarily interdependent.[217] In this context, neither the VCLT nor the ICJ has addressed inequality between treaty acts as an independent ground for invalidity. Accordingly, there are no ICJ precedents that explicitly recognize the concept of *laesio enormis* as a general principle of law. For example, in cases such as Fisheries Jurisdiction (1974) and Gabčíkovo-Nagymaros Project (1997), the validity of treaties was disputed,[218] yet *laesio enormis* was not invoked as a direct argument. Similarly, in Military and Paramilitary Activities in and against Nicaragua (1986), U.S. influence over Nicaragua was discussed,[219] but not as a matter of 'undue influence' -rather, within the context of sovereignty violations and the unlawful use of force. Another example is the Certain Phosphate Lands in Nauru (1992) case, where allegations of economic exploitation were raised,[220] but *laesio enormis* was not explicitly employed as a legal argument. Therefore, it may be concluded that in international law, the imbalance of obligations in treaties is generally addressed through political or diplomatic negotiation rather than as a formal legal principle.

The approach to addressing imbalances in performance in disputes involving states has primarily developed within the context of investment arbitration. This practice, often referred to as crippling compensation, arises when the amount a state must pay to investors exceeds its economic capacity.[221] Such cases are particularly controversial in disputes concerning the expropriation of foreign investments or breaches of contract. Although not primarily focused on the balance of contractual performance, this approach reflects the efforts of international courts to address disproportionate compensation, and its applicability to a potential Ukraine-Russia peace settlement remains uncertain.

In compensation matters, the ICJ generally relies on the principle of full reparation. For example, in the Corfu Channel Case (1949), the Court determined the amount of compensation without taking into account Albania’s economic capacity.[222] In fact, Albania's operational capacity was not taken into account for the standard of omission in determining Albania's responsibility.[223] Conversely, the Diallo case demonstrates an attempt to reach a more equitable determination of compensation.[224] Overall, it may be said that the Court possesses limited tools for examining the balance of obligations in a prospective Ukraine-Russia peace treaty. If the relevant threshold were understood as provisions that paralyze a state’s ability to sustain the minimum living conditions of its population, the Court could, for instance, oversee issues such as the preservation of Ukraine’s access to its Black Sea coastline

When the ICJ has engaged with treaty invalidity claims based on coercion, it has set a high evidentiary threshold. For example, the completion of procedural steps such as the exchange of notes during treaty negotiations has been considered sufficient to prevent later claims of coercion from rendering a treaty void.[225] The ICJ has prioritized whether negotiations were conducted freely rather than treating VCLT 52 as

[217] Malawer (n 9) 17; de Jong (n 14) 235.

[218] *Case Concerning Gabčíkovo- Nagymaros Project* (*Hungary v. Slovakia*) (Judgment) [1997] ICJ Rep 7, paras. 134-148; *Fisheries Jurisdiction Case* (*Federal Republic of Germany v. Iceland*) (Judgment) [1973] ICJ Rep 4 para. 24.

[219] *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*) (Judgment) [1986] ICJ Rep 14, paras. 93, 192, 202, 204, 253, 279, 291.

[220] *Case Concerning Certain Phosphate Lands in Nauru* (*Nauru v. Australia*) (Judgment) [1992] ICJ Rep 240, para 66.

[221] Martins Paparinskis, ‘Crippling Compensation in the International Law Commission and Investor–State Arbitration’ 37 ICSID Review - Foreign Investment Law Journal 289.

[222] *Corfu Channel Case* (*UK v Albania*) (Merits) [1949] ICJ Rep 4, 36.

[223] Ibid 23.

[224] *Case Concerning Ahmadou Sadio Diallo* (*Republic of Guinea v. Democratic Republic of the Congo*) (Judgment) [2012] ICJ Rep 324, paras. 24, 33, 36.

[225] *Fisheries Jurisdiction Case* (*Federal Republic of Germany v. Iceland*) (Judgment) [1973] ICJ Rep 4 para. 24; *Fisheries Jurisdiction Case* (*United Kingdom and Northern Ireland v. Iceland*) (Judgment) [1973] ICJ Rep 4, para. 24.

an automatic invalidity mechanism[226] linked to Article 2(4) of the UN Charter.[227]

This consistent judicial approach does not stem from a reluctance to challenge powerful states, but rather from the technical limitations of VCLT 52 in regulating territorial treaties after armed conflicts. Consequently, VCLT 52 applies primarily to the negotiation phase of treaties rather than their substantive content.

Issuing *ex ante* rulings on the validity of hypothetical peace treaties before negotiations occur would be inconsistent with ICJ standards. The reason is straightforward: even debating such invalidity claims could undermine treaty compliance and, in turn, global peace and security. The ICJ has consistently sought to distinguish treaty invalidity claims from *jus cogens* violations and coercion cases, emphasizing the need to encourage peaceful dispute resolution.[228] Thus, while treaty invalidity due to coercion is recognized both as a customary norm and under VCLT 52, it has yet to influence the ICJ's operative paragraphs in a decisive manner.

v. *Peace Treaties*: The ICJ considered an advisory opinion regarding the appointment of representatives to commissions established under the peace treaties with Bulgaria, Romania, and Hungary following World War II. These states refused to appoint representatives, citing inequality in the treaties as their justification.

During the proceedings, UK Counsel Fitzmaurice argued that the case was based on the claim that these peace treaties were invalid due to a lack of reciprocity.[229] He dismissed this argument as "nonsense," emphasizing that peace treaties inherently contain asymmetrical provisions. Otherwise, he argued, it would be impossible to conclude wars.[230] The ICJ ruled that Bulgaria, Romania, and Hungary were obligated to fulfill their procedural commitments, without addressing the inequalities in the substance of the treaties.[231]

Expanding VCLT 52 beyond coercion to invalidate treaties based on inequality would directly contradict the principle of *pacta sund servanda*. As VCLT 52 does not impose substantive limitations, it could theoretically apply to trade agreements, prisoner exchanges, or other treaties, but its application depends on demonstrating substantial coercion rather than mere inequality.

Despite the frequent invocation of UN Charter Article 2(4) in international legal disputes since 1969, VCLT 52 has rarely played a role in the invalidation of peace or ceasefire treaties.[232] Historically, Grotius required a formal declaration of war as a precondition for invalidating a peace treaty due to coercion. However, Russia's failure to issue a formal declaration of war against Ukraine complicates the applicability of this historical exception.

Nonetheless, the UN General Assembly[233] and UNSC's[234] emphasis on peace and negotiated solutions limits the relevance of declarations of war in modern treaty law. While such declarations were historically significant for tax regimes, neutrality status, and diplomatic relations, the shift toward the term "armed

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[226] On the fact that VCLT 52 is not itself a *jus cogens* norm, see Forlati (n 122) 331.

[227] Ibid 329-330.

[228] Alessandra Gianelli, 'Absolute Invalidity of Treaties and Their Non-Recognition by Third States' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford Academic, Oxford University Press 2011) 335.

[229] *Interpretations of Peace Treaties* ICJ Oral Proceedings 329.

[230] Ibid; Malawer (n 9) 148.

[231] *Interpretation of Peace Treaties*, (*Advisory Opinion*) [1950] ICJ Rep 65, 77-78.

[232] Forlati (n 122) 322. In its decisions on Sejdić and Finci, Zornić and Pilav, the ECHR ruled that certain provisions of the Dayton Agreement violated human rights within the constitutional framework provided for by the Dayton Agreement. However, these decisions did not imply that the agreement was invalid because it was implemented by force. See *Case of Sejdić and Finci v. Bosnia and Herzegovina* [2009] ECHR para. 67.

[233] UNGA A/ES-11/L.1.

[234] UNSC S/PRST/2022/3.

conflict" in international humanitarian law[235] has rendered the distinction between ceasefire and peace treaties less critical.[236] Notably, Turkey classified the Ukraine-Russia conflict as a "war" under Article 19 of the Montreux Convention.[237]

The exception granted to peace treaties stems from their role in maintaining global peace and security. However, peace treaties imposed under conditions that economically and administratively cripple one party beyond territorial losses often lay the groundwork for future conflicts. Still, any dispute over the validity of such treaties must be resolved peacefully under Article 33 of the UN Charter, as stipulated in VCLT 65. Accordingly, artificial legal constraints should not obstruct diplomatic solutions.

vi. *Border Agreements*: Historically and legally, territorial and border regimes have been recognized as *erga omnes* obligations, binding even successor states, despite potential defects in the consent of the original parties.[238] Since these agreements are both performative and constitutive, they are not evaluated as ordinary treaties. For example, in Gabčíkovo, the ICJ stated that the agreement determining the status of the Danube River also affects third parties.[239] Although the democratic legitimacy of constitutive rules has been debated, their role in maintaining global and regional stability makes them an essential -albeit undemocratic- determinant of democratic order.[240]

Despite clear evidence of coercion in certain border agreements, such as those between the USSR and China, if such treaties are recognized, implemented, and upheld by both parties, their legal significance cannot be dismissed. This underscores the flawed assumption that all treaties concluded under coercion are automatically invalid under VCLT 52.[241] Notably, territorial transfer is not a prerequisite for the application of VCLT 52. Ukrainian President Zelensky himself acknowledged in peace talks that the Russian-controlled Kursk region could be considered for a territorial swap.[242] Since territorial transfer is not inherently a *jus cogens* violation, it remains a legitimate subject of negotiation. *Jus cogens* violations, rather than territorial transfer per se, may instead be addressed under VCLT 53 as a substantive limitation on treaty content.

vii. *Ratione Temporis*: The validity of an international treaty depends on meeting fundamental legal requirements. Procedures for invalidity fall under VCLT 65 and subsequent provisions. Since VCLT 52 does not impose substantive content restrictions, any premature legal interpretation that preemptively invalidates a hypothetical treaty lacks binding force.[243]

Invalidity under VCLT 52 can only be assessed post-negotiation. *Ab initio* invalidity only takes retroactive legal effect once established through proper legal procedures. Thus, a unilateral declaration of invalidity by

[235] Emily Crawford, Annabelle Lukin and Jacqueline Mowbray, 'The Terminology of the Law of Warfare: A Linguistic Analysis of State Practice' 14 Journal of International Humanitarian Legal Studies 197.

[236] Christopher Greenwood, 'Scope of Application of Humanitarian Law' in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford University Press 2009) 67 ff.

[237] *Convention regarding the Régime of Straits* (adopted 20 July 1936, entered into force 9 November 1936) 173 LNTS 213. Turkey to implement pact limiting Russian warships to Black Sea <https://www.reuters.com/world/middle-east/turkey-implement-international-pact-access-shipping-straits-due-ukraine-war-2022-02-27/?utm> Access: 31 January 2025.

[238] Craven (n 15) 125. See also Barbara Miltner, 'Territory and Its Relationship to Treaties' in Michael J. Bowman and Dino Kritsiotis (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge University Press 2018) 468-506.

[239] *Case Concerning Gabčíkovo- Nagymaros Project* (*Hungary v. Slovakia*) (Judgment) [1997] ICJ Rep 7, para. 123. For a discussion of agreements creating objective status, see Sevin Toluner, 'Objektif Hukuki Durum Yaratan Andlaşmalar Kavramı Gerekli midir?' 25 Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 519.

[240] Étienne Balibar, *We, the People of Europe?: Reflections on Transnational Citizenship* (Princeton University Press 2004) 109.

[241] Malawer (n 9) 159-160.

[242] Shaun Walker, 'Zelenskyy: Europe cannot guarantee Ukraine's security without America' Guardian <https://www.theguardian.com/world/2025/feb/11/zelenskyy-europe-cannot-guarantee-ukraines-security-without-america> Access: 29 October 2025.

[243] Verhoeven (n 54) 318.

Ukraine or Russia would not render a future treaty void.[244] Therefore, it is incorrect to suggest that Ukraine would have no obligation to comply with a future peace treaty involving territorial transfer.[245]

viii. *Locus Standi*: If Ukraine invokes VCLT 52 in a future peace treaty, it must formally notify Russia of its claim. In the event of a dispute, peaceful settlement mechanisms under UN Charter Article 33 must be pursued.[246]

A critical issue is whether states that are not parties to the agreement can invoke VCLT 52. Outside the climate crisis and certain human rights disputes,[247] *actio popularis* is not generally accepted.[248] Consequently, invalidity under VCLT 52 can only be invoked by states that are parties to the VCLT and within the scope of treaties concluded after its entry into force, provided the ICJ has jurisdiction recognized by both parties.[249] While it is true that an impartial determination of invalidity is binding on the parties requesting such a determination, if, for any reason, such a decision cannot be reached, each party may maintain its unilateral position resulting in an unresolved dispute between the two states.

Since *erga omnes* treaty obligations concerning territorial arrangements do not automatically constitute *jus cogens* violations, third states cannot challenge a peace agreement before the ICJ under Article 48 of Draft articles on Responsibility of States for internationally wrongful acts (ARSIWA). In any case, a jurisdictional link is required, typically provided by a treaty addressing the substantive issue (e.g., Article IX of the 1948 Genocide Convention) or by an *ad hoc* agreement between the parties If serious violations under Article 41 were proven, it would be illogical for states that failed to prevent them to seek judicial intervention to invalidate a peace treaty. However, if the Ukraine-Russia peace treaty includes guarantor states, these guarantors could challenge its validity to the extent that it affects their legal rights and obligations. Thus, the *erga omnes* nature of the treaty is reinforced.

ix. *Third Parties*: First and foremost, it should be emphasized that third parties cannot transfer Ukrainian territory, as illustrated by the example of the Munich Agreement. In principle, invalidity does not affect states that provided valid consent to a treaty.[250] Moreover, VCLT 51 and 52 do not distinguish between separable treaty provisions, meaning that provisions unaffected by coercion may remain in force.[251] In such cases, VCLT 44(3)(c) mandates that the execution of the remaining treaty provisions must be equitable.

If guarantor states are involved in the Ukraine-Russia peace agreement, a Ukrainian claim of invalidity under VCLT 52 raises practical concerns regarding the application of VCLT 69(4). The challenge lies in whether Ukraine can selectively reject treaty provisions while other states uphold them. Such selective invalidation is impractical in peace treaties, which create a new legal order rather than merely affirming pre-existing obligations. Therefore, the presence of guarantor states could contribute to the sustainability and enforceability of the peace settlement.[252]

[244] For the rejection of relative invalidity presented the Vienna conference by the USA, Australia and France, see United States: A/CONF.39/C.1/L.277. Australia: A/CONF.39/C.1/L.284 and France: A/CONF.39/C.1/L.300. de Jong (n 14) 229.

[245] *Vienna Convention on the Law of Treaties* Article 69 (2.b).

[246] Ibid Article 65.

[247] *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland* [2024] ECHR Grand Chamber Judgement, para. 634.

[248] Verhoeven (n 54) 314.

[249] Gianelli (n 228) 335.

[250] Verhoeven (n 54) 315.

[251] Ibid 316.

[252] On the continuing obligations of other states in the event of a claim that multilateral treaties are invalidated by coercion, see de Jong (n 14) 229. On the inadequacy of military guarantees for European states despite their desire to be involved in the peace process, see Özalp (n 145).

x. *Does Territorial Gain Through Coercion Become Legal?* No. The conclusions of this study do not support such an assertion. From the outset, territorial acquisition through coercion violates UN Charter Article 2(4), leaving no doubt about its illegality in terms of both legitimate defense and the Security Council's authority. The central issue remains how to resolve the Ukraine-Russia conflict, which the UNSC has failed to end. The UN Security Council's failure to deter the aggressor state through the enforcement of Article 2(4) of the UN Charter in the context of the Ukraine–Russia war constitutes a critical exception to the conclusion of this study. This exception also highlights the dysfunction of the post-1945 institutional mechanisms. Rather than allowing disputes to remain unresolved within a shifting geopolitical landscape, it is imperative to pursue updates that reconcile realpolitik with the requirements of legal order.

If a dispute escalates into armed conflict and the parties express a willingness to negotiate a ceasefire or peace treaty, this study's interpretation of VCLT 52 becomes relevant only at this stage. Since VCLT 52 imposes a formal limitation, it does not restrict the substantive content of negotiations. The article applies only if coercion eliminates the free consent of the state's representatives, its approving assembly, and the state itself through indirect actions during negotiations.

A Ukraine-Russia peace treaty will likely involve reciprocal concessions. While Ukraine may invoke VCLT 52 if its consent is undermined by external threats -such as U.S. and EU warnings of aid cessation- it must recognize that its consent to either war or peace remains its own decision, not the responsibility of any other state.

Thus, the conditions of conflict cannot retroactively invalidate a peace treaty that both parties willingly accepted. If a border change is included in a treaty that ends the conflict, its legality derives from the binding will of the negotiating parties. This conclusion aligns with the UN's mission to maintain peace and security, which extends beyond ensuring equal opportunities for the "victim" state to encompass the broader interests of the international community.[253] Otherwise, confusing the purpose (peace) with the means (negotiations and compromises) would call into question even the UNSC's peace-making initiatives.[254] A Ukraine-Russia peace deal could thus serve as a precedent for "peace through weakness" rather than the post-1945 model of "peace through strength" embodied by NATO.[255]

V. Conclusion

Interpreting VCLT 52 requires more than a literal reading -it necessitates an assessment of its evolution within the context of the present dispute. The Ukraine-Russia war remains an unresolved armed conflict that the UNSC has been unable to conclude. *Ex ante* legal restrictions on potential peace treaties can only arise under VCLT 53 in cases involving *jus cogens* violations. However, territorial transfer, in itself, does not constitute a *jus cogens* violation.

Peace treaties and conflict-ending treaties have historically played a crucial role in maintaining international peace and security, both in theory and practice. Preemptively imposing content restrictions on a hypothetical peace treaty under VCLT 52 is legally unprecedented and inconsistent. It is fair to say that Grotius would agree with this interpretation. In his works, he emphasized the distinction between just and

[253] Bruno Simma, *From Bilateralism to Community Interest in International Law (Volume 250)* (Brill | Nijhoff) 236; Forlati (n 122) 330-332.

[254] For example, it has been argued that UNSC resolution 1244(1999), which indirectly ratifies the Military Technical Agreement of 9 June 1999 between the International Security Force (KFOR) and the governments of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia, and the agreement itself, are invalid under VCLT 52. See Enrico Milano, 'Security Council Action in the Balkans: Reviewing the Legality of Kosovo's Territorial Status' 14 European Journal of International Law 999 1004 ff; Forlati (n 122) 328.

[255] For the French defense minister's criticism of the US's Ukraine-Russia peace initiatives as "peace through weakness" see Özalp (n 145).

unjust wars; however, rather than relying on this distinction to invalidate peace treaties, he focused on the manipulation of will -such as the imposition of unfounded fear upon the other party during treaty negotiations. Therefore, the issue to be examined is not whether territorial transfers may be included in peace treaties, but whether the treaty was concluded through the free will of the parties.

Prioritizing conflict resolution mechanisms when UNSC action or legitimate defense fails is a well-established principle in international law. Before the adoption of the UN Charter, states engaged in warfare and negotiated border agreements. Although the Charter reshaped international relations by formalizing power balances, it remains evident that the UNSC does not enforce the consequences of every violation. At this point, Lauterpacht's assertion is particularly relevant:

> "*Shortcomings of international law cannot be removed by juristic effort, however well meaning.*"[256]

Furthermore, interpreting VCLT 52 to permit treaty withdrawal based on an expansive view of coercion contradicts the fundamental principle of *pacta sund servanda*. It is crucial to recognize that VCLT 52 applies to the form of treaties, not their content, and does not prohibit territorial transfers. The ICJ's jurisprudence focuses on the conditions of negotiation rather than preemptively declaring a yet-to-be-negotiated treaty invalid *ab initio*.

Today, as the United States falls short of its mission to unilaterally maintain global hegemony, the emergence of bipolar and multipolar systems has become inevitable. Within these systems, conflicts between states are increasingly likely to diversify both doctrines and opportunities for confrontation. Therefore, it is essential to avoid interpretations that could reopen settled peace treaties or undermine the principle of *pacta sund servanda*, and instead focus on establishing sustainable peace. In this regard, the measure of sustainability -particularly for agreements establishing territorial or political status- depends on their design in accordance with the realpolitik projections of both the period in which they were concluded and the foreseeable future.

For example, the Montreux Convention of 1936 regulates the passage of merchant and warships through the Istanbul and Dardanelles Straits during both wartime and peacetime, granting priority to Black Sea littoral states. This agreement not only survived the Second World War but continues to serve as a stabilizing instrument amid the ongoing Ukraine-Russia conflict. Therefore, for a sustainable peace following the Ukraine-Russia war, it is essential to consider the relative power and alliances of the states concerned. This study demonstrates that, provided it does not violate peremptory norms under Article 53 of the VCLT, the transfer of territory is not a categorically prohibited element in peace treaties under international law.

The findings of this study align with both theoretical and practical international law principles as well as ICJ precedent. However, to ensure legal consistency, the *erga omnes* nature of border and peace treaties -especially those established under UN Charter Article 33- may require reconsideration. The rule of law demands that status-determining norms, particularly those emerging from state consent in peace treaties, be upheld. Once a peace treaty is established through mutual consent, its legitimacy should not be undermined by *ex post* legal maneuvers.

The Ukraine-Russia war underscores the need to reaffirm the foundational importance of peace treaties in establishing international peace and security. Beyond legal validity, their sustainability -ensuring they do not perpetuate hostilities- should be a central concern. The degree of coercion in negotiations, the ILC's

[256] Hersch Lauterpacht, *The Pact of Paris and the Budapest Articles of Interpretation* (Grotius Society 1935) 190.

drafting work, and the impact of peace treaties on third states must be carefully evaluated in shaping the post-conflict legal order.

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