

“Coercion: Economic and Political Pressure”

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Abstract

A treaty can be invalidated under the VCLT, if certain conditions were present at the time of entering into the treaty. Coercion is one of these grounds for invalidation of a treaty. Coercion includes coercion of state representatives and that of states themselves.

Art 51 of the Vienna Convention of Law of Treaties provides that, if the expression of a State's consent to be bound by a treaty has been procured by the coercion of its representative through acts or threats directed against him shall be without legal effect.

With respect to coercion against states, Art 52 of the VCLT provides that if the conclusion of a treaty has been procured by threat or use of force in violation of principles of international law, that treaty would be void. This must be read with Art 2(4) of the U.N Charter, which prohibits the threat or use of force and calls on all members to respect the sovereignty, territorial integrity and political independence of other states.

This clearly refers to any military force or physical force used, unfortunately it fails to clarify whether economic or political force is included in the definition of use of force.

In order to remedy this, the 19th Amendment was proposed to Art 49 of the Draft Articles (Now Art 51), to include economic and political pressure, which therefore meant that Art 2(4) would have to be amended to include economic and political pressure.

Economic and political pressure are definitely factors which would coerce another party to enter into a treaty, unfortunately, due to the lack of consensus on the matter, it would be difficult to include it under Art 2(4) of the U.N Charter. Also it might not be correct to equate the use of economic or political pressure, to the use of armed force, therefore, it would be better to bring about separate substantive provisions to nullify treaties entered into by using economic or political pressure, Even though this had been suggested in 1968 itself, even today, no substantial steps have been taken in this direction. However, as the use of economic and political pressure by states is becoming rampant, there is hope that clear provisions would be drafted to nullify contracts entered into on basis of economic or political pressure.

Introduction

Under the Draft Articles of the VCLT¹, Art 49² dealt with coercion as a condition for invalidation of the treaty.

The General Assembly of the U.N considered the final draft articles on the Law of Treaties submitted by the International Law Commission, and decided to convene an international

¹Vienna Convention of law of treaties

²Article 49. Coercion of a State by the threat or use of force- A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter of the United Nation

conference to formally embody it in an international convention. In the same convention a request was made to the Secretary General to hold the first session in 1968 and the second session in 1969³.

In the First session held in 1968, serious deliberations were held with regard to the interpretation of Art 49 and whether the scope of the meaning of coercion should be widened.

The 19th Amendment was proposed to Art 49⁴ of the Draft Articles (Now Art 51), to include economic and political pressure, which therefore meant that Art 2(4) would have to be amended to include economic and political pressure.

Particularly in the Fiftieth meeting, held on 3rd May 1968, the matter was discussed in great detail. Countries had wide ranging opinion on the issues at hand. The major arguments made by states for inclusion or exclusion of the term economic and political pressure have been discussed below.

The USSR, felt that the term “threat or use of force” applied to all forms of force, and not merely armed force. This would include economic and political pressure. The language used Art 2(4)⁵ was distinct from that found in other provisions of the draft Articles, such as those dealing with right of self defence, wherein specific reference was made to the term “armed attack”.

Canada argued that the term “threat or use of force” only referred to military force and nothing else. It stated that it would threaten the validity of pactasuntservanda, so unless the negotiating states were completely equal in power, one of the States, could at a later date invalidate the agreement on the basis of coercion, if it felt that it entered into a bad deal.

Therefore, States would use coercion as means to escape from binding legal obligations. This would inturn affect pactasuntservanda established under Art 26⁶ of the VCLT. It would also affect the binding applicability of international law.

Additionally, Canada also contended that treaties were always negotiated by states, keeping in mind their own self interests, whether economic or political in nature. Treaties are essentially based on bargaining, one of the weapons available is to withhold the state’s consent. This act alone could be treated as economic or political pressure. It would not be fair, if such a treaty was later held invalid on grounds of coercion due to economic or political pressure.

³ A/CONF.39/26

⁴ Article 49, supra.

⁵ All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

⁶ Article 26 Pactasuntservanda- Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Poland contended that the ILC had drafted the Articles on the Law of Treaties, by codifying principles of international law already in existence, in particular the sovereign equality of states.

Furthermore, it was contended that an express provision must be introduced to include economic and political pressure. A treaty procured by any means of coercion would be void, and there was no reason to confine the definition to certain forms of force.

Australia argued that it was clear that threat or use of force referred to physical force that was being used by the aggressors when the U.N Charter was being drafted. A reference was made to the preparatory work on the U.N Charter, where an amendment proposed by Brazil to include economic force under Art 2(4)⁷ was rejected⁸, as it dealt solely with armed force; and economic and political pressure were dealt with in other provisions.

It was also contended that the General Assembly was not a law making body, and mere General Assembly resolutions on economic and political pressure, would not make it binding. Also it had not achieved that status of custom under international law.

Hungary favoured a the wider interpretation, as it would benefit a large number of states, including the weaker and the developing states which were more vulnerable to economic and political pressure.

U.K. stated that it was a clear case of interpretation and the literal rule of interpretation given out in Art 27⁹ must be applied and only in case of an ambiguous or obscure meaning, recourse can be made to Art 28¹⁰ of draft articles on the law of treaties. (Now embodied in Arts 31 and

⁷All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

⁸ A/CONF.39/C.1/L.67/Rev.1/Corr.1

⁹Article 27. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty;

(b) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

See Also, Art 31 of the VCLT.

¹⁰Article 28. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 27, or to determine the meaning when the interpretation according to article 27:

32 of the VCLT). By applying the golden rule of interpretation, it is clear that Art 2(4) only deals with armed force, so economic and political pressure cannot be include within the definition of Art 2(4).

Romania was in favour of including economic and political pressure. The General Assembly resolution had passed a resolution proclaiming that no state must use economic or any kind of force to gain any advantage from another State¹¹.

Indonesia was in favour of the wider interpretation, and said that States would be unlikely to invoke Art 49¹² without strong reasons, as it would lower its prestige in the international community if treaties were invalidated under Art 49¹³ without just cause.

Chile stated that including economic and political pressure in Art 2(4)¹⁴ would equate it to the prohibition of armed force, and this would not be the best way to deal with the issue. However, Chile is in favour of enacting a separate provision to deal with economic and political pressure.

France stated that the wording must be clear and in unambiguous terms, introduction of economic and political pressure would lead a great deal of ambiguity with regard to the meaning of economic and political pressure.

Zambia vehemently argued that, almost all international lawyers had accepted that force included economic and political force. And in many cases, it was more potent than armed force, therefore it must be included in Art 2(4).

Belgium stated that the meaning of economic and political pressure was unclear and ambiguous, and would therefore render it impossible to apply.

As a result of the conflicting opinions of different states with regard to the inclusion of economic and political pressure under the definition of Art 2(4), a mere declaration was made at the Final Act at the U.N Conference on the Law of Treaties¹⁵.

The Declaration reiterated the principle of pactasuntservanda, and condemned the use of economic or political pressure to coerce another State to enter into a treaty¹⁶.

(a) Leaves the meaning ambiguous or obscure; or

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

See Also, Art 32 of the VCLT.

¹¹ General Assembly resolution 2131 (XX)

¹²Article 49. Coercion of a State by the threat or use of force- A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter of the United Nation

¹³Article 49. Coercion of a State by the threat or use of force- A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter of the United Nation

¹⁴All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

¹⁵ A/CONF.39/26

Economic and political pressure are definitely factors which would coerce another party to enter into a treaty, unfortunately, due to the lack of consensus on the matter, it would be difficult to include it under Art 2(4) of the U/N Charter. Also it might not be correct to equate the use of economic or political pressure, to the use of armed force, therefore, it would be better to bring about separate substantive provisions to nullify treaties entered into by using economic or political pressure, Even though this had been suggested in 1968 itself, even today, no substantial steps have been taken in this direction. However, as the use of economic and political pressure by states is becoming rampant, there is hope that clear provisions would be drafted to nullify contracts entered into on basis of economic or political pressure.

¹⁶DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith, Reaffirming the principle of the sovereign equality of States, Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty, Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States, Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,

1. Solemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent,
2. Decides that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.