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VALIDITY OF A POTENTIAL PEACE TREATY BETWEEN UKRAINE AND THE RUSSIAN FEDERATION IN THE LIGHT OF ARTICLE 52 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES

Abstract: *This article examines the legal validity of a potential peace treaty between Ukraine and Russia under Art. 52 of the Vienna Convention on the Law of Treaties (VCLT), which renders treaties invalid if procured by the threat or use of force. It analyses the key elements of Art. 52, the relevant case law and state practice and the legal consequences for other states in case such a treaty is voided.*

Keywords: coercion, Vienna Convention on Law of the Treaties, peace treaty, Ukraine, VCLT

INTRODUCTION

Recent diplomatic developments, particularly following the high-level meeting in Riyadh, have indicated a notable shift in both American and Russian officials' rhetoric regarding the possibility of ending the conflict in Ukraine.[1] The specific terms and parties of any potential peace treaty regarding the situation in Ukraine are still unclear. However, there are strong indications that a peace settlement would likelyinvolve significant territorial concessions on the part of Ukraine.[2] While considerable

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[1] *Secretary of State Marco Rubio's Remarks to the Press*, US Department of State, 10 March 2025, available at: https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-2/ (accessed 30 June 2025).

[2] P. Kehl, *Treaty or No Treaty? – International Law and the Purported Trump Peace Proposal for Ukraine*, EJIL: Talk!, 2 December 2024, available at: https://www.ejiltalk.org/treaty-or-no-treaty-international-law-and-the-purported-trump-peace-proposal-for-ukraine/; G. Fox, *A Legal Framework for a Russia-Ukraine Peace Agreement*, EJIL: Talk!, 19 December 2024, available at: https://www.ejiltalk.org/a-legal-framework-for-a-russia-ukraine-peace-agreement/ (both accessed 30 June 2025).

international discussion has centred on the political and strategic dimensions of whether Ukraine should be willing or compelled to make territorial concessions,[3] insufficient attention has been devoted to examining the fundamental question of whether such an international agreement would be valid under international law.

This article examines the potential legal impediments that such a prospective peace treaty would face, in the light of Art. 52 of the Vienna Convention on the Law of Treaties (VCLT or the Convention).[4] The core focus is on the Convention's explicit provision rendering treaties invalid if they have been procured by the threat or use of force in violation of principles enshrined in the United Nations Charter (UN Charter). This critical legal framework raises fundamental questions about the validity of any peace agreement negotiated in the context of ongoing military operations, especially one that includes concessions to the detriment of the victim of aggression. It may also have significant implications for the future legal status and obligations of Ukraine, the Russian Federation and other states of the international community.

1. APPLICABLE LAW

Both Russia and Ukraine are parties to the VCLT, which was also acknowledged by the International Court of Justice (ICJ) in its recent judgment, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination*.[5] It follows that a possible future written agreement between Ukraine and Russia concerning a peace settlement would satisfy the Convention's definition of an international treaty. The legal framework of the VCLT would therefore provide the primary mechanism for evaluating the validity and legal effect of any such agreement. The key provision analysed here is Art. 52 VCLT, according to which a "treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."

Art. 52 VCLT protects a state's free will as a cornerstone of free consent[6] and provides a fundamental safeguard against the coerced formation of international agree-

[3] O. Goncharova, *Ukraine Must Make Concessions in Any Peace Deal, Rubio Says*, The Kyiv Independent, 10 March 2025, available at: https://kyivindependent.com/ukraine-must-make-concessions-in-any-peace-deal-rubio-says/ (accessed 30 June 2025).

[4] Vienna Convention on the Law of Treaties (signed on 23 May 1969, entered into force on 27 January 1980), 1155 UNTS 331.

[5] ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, 31 January 2024, ICJ Rep 2024, para. 46.

[6] *See also* Preamble of the Vienna Convention on the Law of Treaties (signed on 23 May 1969, entered into force on 27 January 1980), 1155 UNTS 331.

ments through use of force or the threat of force against a state. The provision aims to protect the sovereign equality of states by ensuring that international agreements reflect their genuine consent rather than submission to coercion. Art. 52 VCLT is closely linked with the general customary rule prohibiting the use of force, and thus also with Art. 2(4) UN Charter, and it serves to reinforce the latter since the inevitable consequence of any treaty which the victim state is coerced into by the threat or use of force is for it to be null and void.[7]

The rule which invalidates an agreement concluded under the threat or use of force has the character of customary international law, as also confirmed by the ICJ in the *Icelandic Fisheries* case.[8] Accordingly, the invalidity rule codified in Art. 52 VCLT extends to all states and their international agreements, including those that are not parties to the Convention or members of the United Nations.

2. PROCURED BY THE THREAT OR USE OF FORCE IN VIOLATION OF THE PRINCIPLES OF INTERNATIONAL LAW

Considering the current political climate, the key question is whether Ukraine can validly accept unfavourable terms in a peace treaty, most notably terms that would require any territorial concessions. To put it differently, is it legally permissible under international law for Ukraine to unilaterally agree to territorial concessions in exchange for peace? The core legal questions regarding the implications of Art. 52 VCLT are therefore whether a potential peace treaty between Ukraine and Russia could be deemed as having been "procured through the threat or use of force" and what the consequences are if the answer to this question is affirmative.

2.1. Use of unlawful force

Art. 52 VCLT itself does not define the term "force". Although there were conflicting views among states during the drafting of the Convention regarding whether Art. 52 should also encompass economic coercion,[9] it can be stated with little doubt that the term "force" is used in connection with the general prohibition on the use of force as stipulated in Art. 2(4) of the UN Charter. At the same time, from the

[7] M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Brill, Leiden: 2009, pp. 649–650.

[8] ICJ, *Fisheries Jurisdiction* (*United Kingdom v. Iceland*), Judgment, 2 February 1973, ICJ Rep 1973, p. 3, para. 24 – the ICJ held that "[t]here can be little doubt, as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void."

[9] O. Corten, P. Klein (eds.), *The Vienna Conventions on the Law of Treaties: A Commentary*, Oxford University Press, Oxford: 2011, pp. 1205–1206. *See generally* M. Lipovský, *Suitability of the Principle of Non-intervention as a Rule against Cybernetic Electorate Targeting Information Operation*s, unpublished manuscript (on file with the author).

wording of Art. 52 VCLT, specifically from the wording "in violation of the principles of international law", it can be concluded that only treaties resulting from the *unlawful* use of force are subject to invalidity.[10]

It follows that treaties concluded under coercion involving the *lawful* use of force, such as use of force in self-defence under Art. 51 of the UN Charter or according to Security Council resolutions under Chapter VII (Art. 42 of the UN Charter) do not fall under the scope of invalidity. In other words, if the coercion in question is a result of the lawful use of force, under which an aggressor is compelled to conclude an unfavourable international treaty, such a treaty is not rendered invalid under Art. 52 VCLT.[11]

It is well known that on 24 February 2022, the Russian Federation launched a full-scale military attack on Ukraine. The invasion was another escalation of the conflict between the two countries which began in 2014. Russia's full-scale invasion of Ukraine included the deployment of ground forces into Ukrainian territory and air and naval attacks on Ukraine.[12] These acts undoubtedly have constituted the "use of force" within the meaning of Art. 2(4) of the UN Charter. Russian officials have provided several justifications for their invasion of Ukraine. Initially, they claimed that Russia did not feel secure due to a perceived threat from Ukraine linked with concerns over the expansion of NATO. They explicitly referred to their actions as a "pre-emptive strike". Later, Russia also offered other reasons, including the need to protect Russian-speaking populations in Ukraine and allegations of "genocide" in Donbas or alleged biological weapons development programmes in Ukrainian territory.[13] All of these assertions point to the fact that Russia attempts to justify its invasion of Ukraine by claiming to exercise the right to self-defence. However, all these assertions were either unsubstantiated or referred to a distant, vague threat rather than an actual or imminent threat of armed attack.[14]

It can therefore be concluded that the first element of Art. 52 VCLT is met, because the Russian invasion constitutes an "unlawful use of force". This conclusion is further supported by the UN General Assembly, which in its resolution of 2 March 2022 deplored "in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter."[15]

[10] K. Schmalenbach, *Article 52*, in: O. Dörr, K. Schmalenbach (eds.), *Vienna Convention on the Law of Treaties: A Commentary*, Springer, Berlin: 2018, p. 949.

[11] *Ibidem*, p. 950.

[12] *See* section edited by K.E. Eichensehr, *Contemporary Practice of the United States Relating to International Law*, 116(3) American Journal of International Law 593 (2022), pp. 593–652.

[13] T. Hoffmann, *War or Peace? – International Legal Issues Concerning the Use of Force in the Russia–Ukraine Conflict*, 63(3) Hungarian Journal of Legal Studies 206 (2022).

[14] *Ibidem*. *See generally* C. Gray, *International Law and the Use of Force*, 3rd ed., Oxford University Press, New York: 2008, pp. 114–167.

[15] UNGA resolution of 18 March 2022, *Aggression against Ukraine*, Doc. A/RES/ES-11/1.

2.2. Legal consequences of invalidating a treaty according to Art. 52 VCLT

It is important to note that the effect of invalidating a treaty under Art. 52 VCLT is inevitable, since it is an automatic legal consequence of any treaty if its conclusion has been procured by the threat or use of force, and such treaty is void *ab initio*.[16] Thus, unlike the grounds for invalidity set out in Arts. 48 to 50 VCLT (i.e. error, fraud or corruption of a state representative), for example, in the case of Art. 52 there is no need for a party to the contract to invoke such invalidity. Art. 52 provides absolute voidness,[17] which occurs automatically and *ex tunc*.[18]

Art. 52 VCLT can be understood not only as safeguarding the free will/consent of states, but also as a broader mechanism reinforcing the system of collective security built after the World War II (WWII) era. By preventing the recognition or "legalisation" of territorial acquisitions achieved through the unlawful use of force, Art. 52 may serve as a tool for strengthening the international order and discouraging attempts for territorial acquisition through aggression.[19] In this context, it also appears appropriate to note that, in light of the wording of Art. 44(5) VCLT,[20] a treaty rendered invalid under Art. 52 is null and void in its entirety. As a result, it is not possible to extract or salvage any provisions that would produce legal effects.[21]

Such an interpretation of Art. 52 VCLT would lead to the conclusion that any peace treaty concluded by Ukraine under coercion and containing territorial concessions in favour of Russia would be automatically void *ab initio*.[22] The effect of Art. 44(5) VCLT, which precludes the separation of a treaty's provisions, would also mean that even those parts of the potential agreement that would be beneficial for Ukraine would be invalid.

2.3. Consequences for possible territorial concessions

Taking into account the recent political development, it can be expected that a proposed peace agreement between Ukraine and Russia would likely include territorial concessions on the part of Ukraine, which could concern the lands of Crimea, Donetsk, Luhansk, Kherson or Zaporozhe.[23] However, if the legal title for territo-

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[16] Schmalenbach, *supra* note 10, pp. 954–955.

[17] Corten, Klein, *supra* note 9, p. 1214.

[18] Schmalenbach, *supra* note 10, pp. 954–955.

[19] J. Crawford, *Brownlie's Principles of Public International Law*, Oxford University Press, Oxford: 2012, pp. 387–395.

[20] Art. 44(5) VCLT provides that "[i]n cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted."

[21] *Ibidem*.

[22] M. Vishchyk, J. Pizzi, *Compromise on Territory, Legal Order, and World Peace: The Fate of International Law Lies on Ukraine*, Just Security, 6 October 2023, available at: https://tinyurl.com/mrxspbec (accessed 30 June 2025).

[23] Fox, *supra* note 2; Kehl, *supra* note 2.

rial gains of the Russian Federation was to be a treaty concluded with Ukraine in connection with coercion (in the form of the unlawful use of force), such a treaty would be without legal effect. In such a case, the Russian Federation would lack a valid legal title to acquire the territories concerned.[24] Moreover, the absence of a valid legal title would apply not only to any territorial transfers resulting from coercion, but also to the continued military and civilian presence of the Russian Federation in the affected Ukrainian regions.

That would lead to several legal consequences. Firstly, the presence of Russian civilian and military personnel would continue to qualify as an unlawful use of force.[25] In this regard, it can be convincingly argued that in future, ongoing unlawful occupation of Ukrainian territories by the Russian Federation would constitute a continuing armed attack within the meaning of Art. 51 of the UN Charter. Consequently, Ukraine would remain entitled to exercise its right to self-defence.[26] Secondly, the possible future annexation of Ukrainian territories would lack any legal title, and the continuing unlawful use of force by Russian forces would still qualify as a violation of peremptory norm,[27] thus causing serious legal consequences for the international community. The consequence of that would be an obligation on the rest of the states to not recognise the effects of any possible Russian annexation of Ukrainian territories.

The duty to not recognise such an unlawful situation is provided in Art. 41(2) of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which states: "[n]o State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation."[28] In other words, states have a duty to refrain from certain actions, which includes two key obligations. Firstly, they are obliged to not recognise as lawful any situation resulting from serious breaches as defined

[24] M. Vischyk, J. Pizzi, *The Voices from Kyiv: Is the World legal Order in Decay?*, Just Security, 26 February 2025, available at: https://www.justsecurity.org/108358/kyiv-world-legal-order-decay-2/ (accessed 30 June 2025).

[25] ICJ, *Military and Paramilitary Activities in and against Nicaragua Nicaragua v. United States of America*, Judgment, 27 June 1986, ICJ Rep 1986, paras. 188–190; UNGA resolution of 24 October 1970, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, Doc. A/RES/2625(XXV), p. 122.

[26] D. Akande, A. Tzanakopoulos, *Use of Force in Self-Defence to Recover Occupied Territory: When Is It Permissible?*, EJIL: Talk!, 18 November 2020, available at: https://www.ejiltalk.org/use-of-force-in-self-defence-to-recover-occupied-territory-when-is-it-permissible/ (accessed 30 June 2025).

[27] ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, ICJ Rep 1986, para. 190; ILC, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens)*, Yearbook of the International Law Commission, 2022, vol. 2, part 2, Annex.

[28] ILC, *Responsibility of States for Internationally Wrongful Acts with Commentary*, Yearbook of the International Law Commission, 2001, vol. 2, part 2.

in Art. 40 ARSIWA. Secondly, states must not provide any aid or support in sustaining such a situation.[29] The rule is also embodied in the UN General Assembly Declaration on Friendly Relations and Co-operation Among States, where it is directly connected with the prohibition to recognise as legal any territorial acquisition resulting from the threat or use of force.[30] The rule regarding the obligation of non-recognition reflects the so-called Stimson Doctrine from the time of the Manchurian Crisis of 1931–1932[31] and it is to be considered a customary norm of international law, binding on all states.[32]

The ICJ has addressed the duty of non-recognition in several significant advisory opinions. First, in the *Namibia* Advisory Opinion (1971),[33] where the ICJ analysed the legal consequences of South Africa's continued presence in Namibia despite UN Security Council Resolution 276 (1970). The ICJ held that the United Nations member states were obligated to acknowledge the illegality of South Africa's presence in Namibia. Furthermore, states were required to refrain from any actions that might suggest their recognition of the legality of South Africa's presence or to provide support or assistance to its administration.[34] From the reasoning of the advisory opinion, it appears that in *Namibia* the ICJ not only identified the obligation of other states to refrain from recognising the unlawful situation as lawful, but also articulated a positive duty for states to acknowledge the illegality of South Africa's actions. On the other hand, in this opinion, the ICJ considered only a situation where South Africa would not adhere to a binding Security Council resolution, and the existence of such resolution played a significant role for the ICJ's conclusion on the legal consequences for other UN member states.[35]

The ICJ further addressed the obligation of non-recognition in the *Wall* Advisory Opinion (2004), where the court examined the legal consequences arising from Israel's construction of a wall in the Occupied Palestinian Territory. The Court took the position that all states are under the obligation to not recognise the illegal situation resulting from the construction of the wall in the Occupied Palestinian

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[29] *Ibidem*.

[30] UNGA resolution of 24 October 1970, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Doc. A/RES/2625(XXV), p. 123: "No territorial acquisition resulting from the threat or use of force shall be recognized as legal."

[31] ILC, *Responsibility of States for Internationally Wrongful Acts with Commentary*, p. 114 quoting Henry Stimson, *Secretary of State's Note to the Chinese and Japanese Governments*, fn 653.

[32] *Ibidem*.

[33] ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 21 June 1971, ICJ Rep 1971.

[34] *Ibidem*, para. 119.

[35] *Ibidem*, paras 115–19; *see further* Vischyk, Pizzi, *supra* note 22. *See* A.E. Evans, *Judicial Decisions*, 66(1) The American Journal of International Law 145 (1972).

Territory, including in and around East Jerusalem, and to not provide aid or assistance in maintaining the situation.[36] Such an interpretation is a bit narrower than the one presented by the ICJ in the *Namibia* Advisory Opinion, since it does not include a positive obligation for states to acknowledge the illegality of the situation. However, it still identifies a duty for states to refrain from recognising the unlawful situation as legal.[37]

Recently, the ICJ also addressed the issue in its Advisory Opinion, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem.*[38] The Court observed that the obligations violated by Israel included certain *erga omnes* obligations. More importantly for our purposes, one such obligation, according to the Court, arose from the prohibition against acquiring territory through the use of force.[39] In light of this, the Court asserted that "all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory."[40] Moreover, The ICJ went even further than in its previous *Wall* Advisory Opinion, stating that all states are also under a duty to refrain from entering into treaty relations with Israel in any cases where Israel would intend to act on behalf of the Occupied Palestinian Territory.[41]

To summarise, the conclusion of a peace treaty between Ukraine and Russia – invalid according to Art. 52 VCLT – would also have serious legal consequences for third states. Notably, other states would be obliged to refrain from recognising as legal the possible territorial gains of Russia[42] or any presence of Russian forces in Ukrainian territory. In the light of the ICJ opinion, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, *Including East Jerusalem*, such a duty would also include an obligation to abstain from entering into treaty relations with Russia in any case where Russia would intend to act on behalf of the occupied Ukrainian territory, including economic relations. That could become particularly relevant in the context of international trade concerned with natural resources originating in the Ukrainian-occupied territories.

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[36] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Rep 2004. *See generally* M. Lipovský, *Assessing the Legal Boundaries of Military Support to Ukraine from the Perspective of Use of Force*, 50(1–2) Review of Central and East European Law 87 (2025).

[37] *See generally* C. Gray, *The ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 63(3) Cambridge Law Journal 527 (2004), p. 532.

[38] ICJ, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, 19 July 2024, ICJ Rep 2024.

[39] *Ibidem*, paras. 278–79.

[40] *Ibidem*, para. 279.

[41] *Ibidem*, para. 278.

[42] *See also* Kehl, *supra* note 2.

2.4. Procured by unlawful use force

According to the wording of Art. 52 VCLT, a treaty is only invalid if it has been *procured* by the (unlawful) use of force. That wording indicates that the mere objective existence of an unlawful use of force against a party to a treaty – in this case, Ukraine – is not, in itself, sufficient to render such treaty invalid according to Art. 52 VCLT. Rather, for this to occur, it is necessary to establish a causal link between the unlawful use of force and the conclusion of the treaty.[43]

The key question in this context is what degree of proximity must exist between the unlawful use of force and the conclusion of the treaty. The relevant legal doctrine does not provide a clear, unequivocal answer to this question. Different interpretations exist regarding the degree of the required proximity. For example, the ILC Commission rapporteur Hersch Lauterpacht was of the opinion that "a treaty is invalid if a State, as the result of unlawful use of force, has been reduced to such a degree of impotence as to be unable to resist the pressure to become a party to a treaty."[44] Sir Lauterpacht's approach resonated in the decision of the Dutch District Court of the Hague, which in 1955 reviewed the validity of the Treaty on Questions of Nationality and Option concluded between Czechoslovakia and Germany in 1938. In this context, the Dutch Court gave the following reasoning: "The German-Czechoslovak Nationality Treaty was invalid because it was concluded under clear and unlawful duress – the effect of which Czechoslovakia could not escape – exercised by Germany."[45] The above-quoted examples support a rather high threshold for establishing the causal link, which could be met only in cases where the victim state concluded the treaty because it was deprived of its free will as a result of the unlawful use of force.[46]

However, the object of Art. 52 VCLT is broader than the "mere" protection of a state's free will. The provision also prevents the coercing state from benefiting from the unlawful use of force.[47] This interpretation is supported by the reasoning that Art. 52 serves as a preventive mechanism against the legalisation of territorial acquisitions achieved through aggression.[48] According to the broader approach to the causal link, the invalidity of a treaty could be established if it can be demonstrated that the victim state would not have entered into the treaty had it not been subjected to coercion, whether through the actual use of force or the threat of

[43] Corten, Klein, *supra* note 9, p. 1211.

[44] H. Lauterpacht, *Report on the Law of Treaties*, Yearbook of the International Law Commission, 1953, vol. 2, p. 149.

[45] District Court of the Hague, *Amato Narodni Podnik v. Julius Keilwerth Musikinstrumentefabrik* (1955) 24 ILR 435, 437 in Schmalenbach, *supra* note 10, p. 948.

[46] Corten, Klein, *supra* note 9, p. 1212.

[47] Schmalenbach, *supra* note 10, p. 947.

[48] Crawford, *supra* note 19.

force. Under this approach, the focus is on whether the victim state's decision to conclude the treaty was significantly influenced by the coercive circumstances rather than requiring absolute proof of a direct causal mechanism or absolute absence of freedom of choice.[49]

3. RELEVANT JUDICIAL PRACTICE AFTER THE SECOND WORLD WAR

Judicial practice does not provide many examples of international judicial or arbitral decisions that have directly or exhaustively addressed the issue of causality in the context of assessing an international treaty's validity. In this regard, reference can be made to the decision of the arbitral tribunal in the case of *Aminoil v. Kuwait,*[50] in which the arbitral tribunal addressed Aminoil's argument that its consent to a relevant agreement was vitiated since it had been given under coercion.[51] In this regard, the tribunal stated: "it is necessary to stress that it is not just pressure of any kind that will suffice to bring about a nullification. There must be a constraint invested with particular characteristics, which the legal systems of all countries have been at pains to define in terms either of the absence of any other possible course than that to which the consent was given or of the illegal nature of the object in view, or of the means employed."[52] Eventually, the tribunal dismissed the company's argument because, according to it, the respective pressure "was not of a kind to inhibit its freedom of choice." The reasoning in the decision aligns more closely with a narrower approach which emphasises the need to prove that the affected party was deprived of genuine free choice. In this view, coercion is not established merely by the presence of pressure or unfavourable circumstances, but requires a demonstration that the party had no reasonable alternative but to comply. It is true that this decision was issued in a dispute between a non-state entity and a state which is not a signatory to the VCLT. Moreover, the coercion alleged by Aminoil was economic in nature rather than involving the use of force in the sense contemplated by Art. 52 VCLT. However, the case was decided primarily according to the rules of international law,[53] and it is thus noteworthy.

A similarly restrictive approach can also be observed in the case concerning the dispute over land and maritime boundary between the Emirate of Dubai and the

[49] Corten, Klein, *supra* note 9, p. 1213.

[50] *The American Independent Oil Company v. The Government of the State of Kuwait*, Ad Hoc Arbitration, Final Award, 24 March 1982. For details of the case *see* G. Manston, *The Aminoil–Kuwait Arbitration*, 17(2) Journal of World Trade 177 (1983).

[51] *The American Independent Oil Company v. The Government of the State of Kuwait*, paras. 40–41.

[52] *Ibidem*, para. 43 (emphasis added).

[53] Corten, Klein, *supra* note 9, fn 91.

Emirate of Sharjah, in which the arbitration tribunal held that "mere influences and pressures cannot be equated with the concept of coercion as it is understood in international law."[54]

The ICJ also addressed Art. 52 VCLT in *Fisheries Jurisdiction (UK v. Iceland)*, where the Court examined Iceland's argument that the so-called *Exchange of Notes*, which embodied the relevant agreement, had taken place under "extremely difficult circumstances". Iceland claimed that these circumstances involved the use of force by the British Royal Navy, which was deployed to oppose the 12-mile fishery limit established by the Icelandic Government in 1958.[55] The ICJ addressed Iceland's claim by stating that the statement may be interpreted as a vague charge of duress, rendering the Exchange of Notes invalid *ab initio*.[56] In this context, the ICJ only briefly observed, "as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void."[57] Unfortunately, the ICJ did not further elaborate on this statement, as it held that the court cannot consider an accusation of such a serious nature based solely on a vague and general claim that is not supported by any evidence.[58]

Judge Fitzmaurice also took a rather sceptical stance in his separate opinion on the possibility of duress. He emphasised the fact that Iceland actually obtained the most benefits from the *Exchange of Notes* in question, despite raising the claim of coercion. This approach, which assesses coercion based on the substantive content of the agreement rather than solely on the circumstances of its conclusion, appears to be quite restrictive.[59] The ICJ's relatively high standard of proof regarding the alleged coercion was criticised by dissenting Judge Padilla Nervo. In particular, he disagreed with the Court's insistence on the need for documentary evidence specifying the "*kind, shape, and manner* of the force" that had been used. He further argued that a great power can exert force and pressure on a smaller nation in many ways, even through diplomatic insistence on having its position recognised and accepted. Judge Paddila Nervo pointed out that the Royal Navy did not need to

[54] Court of Arbitration, *Dubai-Sharjah Border Arbitration* (1981) 91 ILR 543, p. 571. For details of the case, *see* S. Fietta, R. Cleverly, *Dubai-Sharjah Border Arbitration (Award of the ad hoc Court of Arbitration, 19 October 1981)*, in: S. Fietta, R. Cleverly (eds.), *A Practitioner's Guide to Maritime Boundary Delimitation*, Oxford University Press, Oxford: 2016, pp. 210–220; D.W. Bowett, *The Dubai/Sharjah Boundary Arbitration of 1981*, 65(1) British Yearbook of International Law 103 (1994).

[55] ICJ, *Fisheries Jurisdiction* (*United Kingdom v. Iceland*), para. 24.

[56] *Ibidem*.

[57] *Ibidem*.

[58] *Ibidem*.

[59] *Ibidem*, Separate opinion of Judge Fitzmaurice, para. 19.

resort to the actual use of armed force: its mere presence within the fishery limits of the coastal state could itself constitute sufficient pressure.[60]

Another example of invoking Art. 52 VCLT was when the League of Arab States argued before the ICJ[61] the invalidity of the Oslo Accords. Despite the League of Arab States's quite strong assertation that the Oslo Accords' "procurement in the context of the occupation constitutes a manifest and egregious form of coercion",[62] the ICJ did not address the argument.

Similarly, Nicaragua invoked the rule embodied in Art. 52 VCLT before the ICJ in its territorial and maritime dispute with Colombia.[63] The ICJ dismissed Nicaragua's claim on the basis that Nicaragua had treated the respective treaty as valid for more than 50 years and had never contested its validity before.[64] This ICJ approach was subject to certain criticism expressed by dissenting Judge Bennouna, who had favoured a deeper investigation into Nicaragua's claim.[65]

Considering that under the VCLT, a treaty procured by the use of force is void *ab initio* without further conditions (see below), some of the ICJ's above-mentioned arguments are not convincing. In this context, the fact that the *victim state* did not contest the invalidity of such a treaty for a certain period should not be relevant to the respective legal assessment. What should be relevant is whether there was an unlawful use of force and whether the treaty was concluded as a consequence of such use (or threat) of force. However, the prevailing judicial practice suggests a tendency among international courts (tribunals) to avoid directly addressing this issue.

4. PEACE TREATIES AND TERRITORIAL CONCESSIONS AFTER SECOND WORLD WAR

Regarding examples of peace treaties concluded after WWII (and since the UN Charter was adopted) that did not directly concern the settlement with the Axis powers, a detailed analysis provided by Rasmussen reveals that it would be exceptional to conclude a peace treaty that would provide for a direct title to *de jure* territorial

[60] *Ibidem*, Dissenting opinion of Judge Paddila Nervo, pp. 47–48.

[61] League of Arab States, *Written Comments of the League of Arab States, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Request for Advisory Opinion)*, 25 October 2023.

[62] *Ibidem*, para. 31.

[63] ICJ, *Case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia*), Memorial of Nicaragua, 28 April 2003, paras. 2.122–2.138.

[64] ICJ, *Case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia),* Judgment, 13 December 2007, ICJ Rep 2007, p. 832, para. 79.

[65] *Ibidem*, Dissenting opinion of Judge Bennouna, pp. 925–26. *See also* K. Rasmussen, *Lawful Ends to Unlawful Wars: The Prohibition on Coerced Treaties and the Fate of Ukraine*, 135 Yale Law Journal 1 (2025), pp. 36–37.

exchanges between states.[66] The sharp decline in the number of treaties ending international armed conflict is also remarkable in contrast to the sharp increase in the number of agreements ending non-international armed conflict. Professor Fox, in his extensive research on peace treaties, notes only seven final agreements since 1990 concerning international armed conflict, as opposed to 63 final agreements for ending armed conflict of a non-international character.[67] These circumstances may have moderated states' practice of invoking the rule set out in Art. 52 VCLT. This is further reinforced by the fact that if a treaty is concluded as a result of force which has been qualified as lawful, Art. 52 VCLT is again irrelevant. This is applicable, for example, to the Dayton peace agreement,[68] which was concluded after NATO's military involvement aiming to end the siege of Sarajevo.[69] However, due to authorisation from the Security Council acting under Chapter VII, that use of force was predominantly seen as lawful. Thus, Art. 52 VCLT does not play any role in the Dayton peace agreement.[70] However, there are two inter-state international treaties that are worthy of closer scrutiny. The first one – the Kumanovo Military Technical Agreement (Kumanovo Agreement) – was concluded during the Kosovo crisis in 1999.[71] The second one – the Lusaka Ceasefire Agreement[72] – emerged during a peace process with the Democratic Republic of Congo and was also signed in 1999. Both of these agreements and the circumstances surrounding their creation are analysed in detail below.

4.1. Kumanovo Agreement

The Kumanovo Agreement was signed on 9 June 1999, in response to the Kosovo crisis, and NATO's military intervention against the Federal Republic of Yugoslavia (FRY) in particular, which occurred between 24 March 1999 and the signing of the Kumanovo Agreement. The treaty was concluded between the FRY and the International Security Force (KFOR). The FRY took the obligation of immediately ceasing hostilities in Kosovo and agreed to a gradual, phased withdrawal of all FRY

[66] Rasmussen, *supra* note 65. Rasmussen identified 23 peace treaties involving de jure transfers of territory. However, 12 of them did so because of the results of boundary commissions; five treaties concerned the post-WWII settlement with the Axis states; and the four remaining treaties involved newly independent states.

[67] G.H. Fox, *Old and New Peace Agreements*, 52(3) Seton Hall Law Review 797 (2022); Fox, *supra* note 2.

[68] Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina (signed on 23 November 1995).

[69] M.O. Beale, *The Role of Airpower in Bosnia-Herzegovina*, Air University Press, Alabama: 1997.

[70] E. Milano, *Security Council Action in the Balkans: Reviewing the Legality of Kosovo's Territorial Status*, 14 European Journal of International Law 999 (2003), p. 1017; *see also* the authors mentioned in fn 81 therein.

[71] Military Technical Agreement between the International Security Assistance Force and the Government of the Federal Republic of Yugoslavia and the Republic of Serbia (signed on 9 June 1999).

[72] Lusaka Ceasefire Agreement (signed on 10 July 1999), as submitted to the Security Council by the parties to the Lusaka Agreement.

forces from that region, relocating them to Serbia outside of Kosovo, as part of the broader effort to restore stability and enable the deployment of international peacekeeping forces.[73] Moreover, the FRY accepted that the KFOR would be deployed to and operate in Kosovo following the adoption of the anticipated future UN Security Council Resolution. This effectively granted the FRY's consent for the presence of international forces in Kosovo.[74] The Security Council Resolution, as was anticipated in the Kumanovo Agreement, was officially adopted by the Security Council the very next day, on 10 June 1999, and it was Resolution 1244 (1999) which established the international administration of Kosovo and endorsed the Kumanovo Agreement.[75]

Since the FRY accepted the Kumanovo Agreement following NATO military intervention on its territory, some may argue that the FRY's consent was a result of coercion, which may raise questions over the agreement's legal validity under Art. 52 VCLT.[76] These doubts are supported by the very wording of the agreement: Art. II.2(1) states that "[o]nce it is verified that FRY forces have complied with this subparagraph and with paragraph 1 of this Article, NATO air strikes will be suspended. The suspension will continue provided that the obligations of this agreement are fully complied with, and provided that the UN Security Council (UNSC) adopts a resolution concerning the deployment of the international security force." This clause strongly suggests a direct conditional link between the cessation of NATO's military action and the FRY's acceptance of and compliance with the terms of the Kumanovo Agreement.[77] These doubts may be further reinforced by the fact that, prior to NATO's military intervention, the FRY had refused to sign the Rambouillet Agreement, which was proposed by NATO.[78] It is true that the proposed Rambouillet Agreement was not identical to the later Kumanovo Agreement. However, there were certain similarities, including the obligation for the FRY to withdraw its forces from Kosovo and international forces (KFOR) to be deployed there.[79] In addition, statements made by representatives of the FRY suggest that its consent to the Kumanovo Agreement was given under coercion due

[73] Military Technical Agreement between the International Security Assistance Force and the Government of the Federal Republic of Yugoslavia and the Republic of Serbia (signed on 9 June 1999), Art. II(1)–(2).

[74] *Ibidem*, Art. I(1)–(2) and Appendix B.

[75] Resolution 1244 (1999), 10 June 1999, S/RES/1244(1999), *see also* Annex II of the SC Resolution 1244 (1999).

[76] Milano, *supra* note 71; I. Janev, *The Possibilities for Termination of the Kumanovo Agreement*, 5(2) Journal of Political Science and International Relations 58 (1999).

[77] Milano, *supra* note 71, p. 1008 and fn 46, which refers to the statement of 6 June 1999 made by NATO spokesman James Shea.

[78] Interim Agreement for Peace and Self-Government in Kosovo (signed on 18 March 1999).

[79] *Ibidem*.

to NATO's bombing campaign.[80] Given that NATO's military action in the FRY was not authorised by a UNSC resolution under Chapter VII of the UN Charter and does not fall under the scope of the right to self-defence as outlined in Art. 51, NATO's use of force may be reasonably qualified as a violation of international law.[81] Thus, it can be reasonably argued that the Kumanovo Agreement met the conditions outlined in Art. 52 of the VCLT, as it was concluded under circumstances that may rather strongly indicate coercion. However, despite these concerns, the agreement was subsequently endorsed by the UNSC through Resolution 1244 (1999).

4.2. Lusaka Ceasefire Agreement

Another example illustrating the practice of states and the approach of UN bodies is the Lusaka Ceasefire Agreement. This agreement, signed on 10 July 1999, pursued the aim of ending the Congo war and involved multiple African states and armed groups (the Democratic Republic of the Congo (DRC), Uganda, Angola, Namibia, Rwanda and Zimbabwe). The Lusaka Agreement covered several issues key to ending the war, including the cessation of hostilities, the withdrawal of foreign forces and the deployment of a UN peacekeeping force to oversee the process.[82] Although the agreement is formally labelled as a ceasefire agreement rather than a peace treaty, strong arguments suggest that its content aligns more closely with the latter. This is primarily because both its purpose and text indicate that it aimed for more than just a temporary halt to the hostilities and rather a long-term resolution to the conflict.[83]

What is particularly relevant in this context is the fact that, during the case before the ICJ, Armed Activities on the Territory of the Congo, Uganda referred to the Lusaka Ceasefire Agreement in arguing that it constituted the DRC's consent to the presence of Ugandan troops on the DRC's territory. Additionally, Uganda asserted that the agreement represented more than a mere ceasefire agreement and that the DRC had violated several provisions of the agreement.[84] The ICJ also acknowledged in its ruling in Armed Activities on the Territory of the Congo[85]

[80] Milano, *supra* note 71, p. 1008 and fn 45, which refers to the statement of FRY representative Mr. Jovanovic.

[81] *But see* J. Currie, *NATO's Humanitarian Intervention in Kosovo: Making or Breaking International Law?*, 36 Canadian Yearbook of International Law 303 (1999).

[82] Lusaka Ceasefire Agreement (signed on 10 July 1999), para. 11.

[83] A. Lang, *Modus Operandi and ICJ's Appraisal of the Lusaka Ceasefire Agreement in the Armed Activities Case: The Role of Peace Agreements in International Conflict Resolution*, 40 New York University Journal of International Law and Politics 107 (2008), pp. 115–116.

[84] ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Rejoinder Submitted by the Republic of Uganda, 6 December 2002, ICJ Rep 2002, paras. 98, 307–320; ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Counter-Memorial of Uganda, 21 April 2001, ICJ Rep 2001, paras. 409–412 (section F).

[85] ICJ, *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Uganda*), Judgment, 19 December 2005, ICJ Rep 2005.

that "[t]he Lusaka Agreement is, as Uganda argues, more than a mere ceasefire agreement. [...] The Agreement goes beyond the mere ordering of the parties to cease hostilities; it provides a framework to facilitate the orderly withdrawal of all foreign forces to a stable and secure environment."[86] However, the ICJ refrained from formally classifying the agreement as a peace treaty; nor did it analyse the validity of the agreement in the light of Art. 52 VCLT.[87]

As with the Kumanovo Agreement, in the case of the Lusaka Agreement certain factual circumstances may have called into whether the DRC had accepted some of its obligations under coercion – such as the commitment to engage in dialogue with armed opposition. However, in its ruling, the ICJ avoided assessing the Lusaka Agreement in the light of Art. 52 VCLT, leaving the question of potential coercion unaddressed.[88]

5. THE INTERNATIONAL LAW DILEMMA AND POSSIBLE REMEDY BY THE SECURITY COUNCIL

It follows that the current framework of international law creates tension between two fundamental principles: the interest of achieving peace, ideally as swiftly as possible, and the need to protect the free will of a party to a treaty. The rules concerning the invalidity of international treaties, as discussed above, may constitute a substantial and frequently insurmountable legal barrier to peace. These legal principles can, in practice, hinder diplomatic efforts, where flexibility and compromises in favour of the aggressor may be essential to achieve peace.[89] Consequently, such a legal barrier may pose a challenge even for the victim state, which, at a certain stage, confronted with a superior armed force, might be compelled to consider concessions or may simply be worn down by the cumulative toll of sustained warfare. Although such consequences may initially appear counterintuitive, they reflect the understanding that the purpose behind the relevant treaty rules extends beyond the mere expression of a party's free will. These rules are also designed to safeguard broader principles, particularly the prohibition against the use of force. This fundamental norm would be significantly undermined if an aggressor were permitted to legitimise the outcomes of its unlawful conduct through a treaty, even with the coerced consent of the victim. Ironically, the legal protection of the

[86] *Ibidem*, para. 97.

[87] Lang, *supra* note 84, p. 116; K. Schmalenbach, A. Prantl, *How to End an Illegal War?*, Völkerrechtsblog, 21 April 2022, available at: https://intrechtdok.de/receive/mir_mods_00012532 (accessed 30 June 2025).

[88] *Ibidem*.

[89] *Ibidem*.

prohibition on the use of force may, in effect, contribute to the prolongation of that very use of force.

Facing this legal dilemma, certain scholars argue that an invalidated treaty could be remedied by a UNSC resolution under Chapter VII.[90] Some authors argue that the Security Council is authorised to enforce agreements on states, provided it does not violate *jus cogens* norms.[91] Fox points out that in such a case, even a Security Council resolution could not validate a peace agreement that approves annexation, because the prohibition of annexation constitutes a norm of *jus cogens*. Fox also points out that there is a fundamental difference between the UNSC imposing otherwise valid obligations on states and attempting to validate a treaty that is invalid from the outset.[92] This appears to be a rather convincing argument.

Moreover, there seems to be even stronger argument against the possibility of curing a treaty voided *ab initio* via a Security Council Resolution. This is primarily because a fundamental characteristic of a treaty is consent, and consent itself cannot be substituted by a decision of the UN Security Council. The essence of treaty law requires that agreements are based on the genuine and free will of the parties involved, which cannot be artificially restored through external intervention by the Security Council. Moreover, it does not appear that the Security Council has the authority to remedy treaties that are null and void, even within the scope of its implicit powers under Chapter VII of the UN Charter.[93]

CONCLUSION

It is submitted here that the rule enshrined in Art. 52 VCLT represents a legal obstacle to the conclusion of a peace treaty between Russia and Ukraine that would contain territorial concession from the latter party. The force used by Russia is qualified as unlawful, and given the long-standing and consistent position of Ukraine's representatives,[94] it can be asserted that any renunciation of Ukrainian territory in favour of Russia would not represent an expression of free consent, but would be made under coercion in the form of the unlawful use of force. Therefore, there are strong legal arguments that a peace agreement involving territorial concessions by

[90] F. Herbert, *Territorial Concessions to the Aggressor*, Verfassungsblog, 6 January 2025, available at: https://verfassungsblog.de/territorial-concessions-to-the-aggressor/ (accessed 30 June 2025).

[91] S. Forlati, *Coercion as a Ground Affecting the Validity of Peace Treaties*, in: E. Cannizzaro (ed.), *The Law of Treaties Beyond the Vienna Convention*, Oxford University Press, Oxford: 2011, pp. 320–332.

[92] Fox, *supra* note 2.

[93] S. Talmon, *Security Council Treaty Action*, 62 Revue Hellénique de Droit International 65 (2009).

[94] K. Denisova, *Ukraine Won't Recognize Occupied Territories as Russian as Part of Any Peace Deal, Zelensky Says*, The Kyiv Independent, 12 March 2025, available at: https://kyivindependent.com/ukraine-wont-recognize/ (accessed 30 June 2025).

Ukraine would, under the current circumstances, be deemed invalid under the rule embodied in Art. 52 VCLT. Such invalidity would have serious legal consequences on the possible future presence of Russian forces in the respective territories, as well as on other states – notably the duty to refrain from legalising the purported territorial gains of Russia.[95]

One could raise the valid question of whether any peace treaty may be lawfully concluded under the current legal regime.[96] Considering not only the text, but also the purpose of Art. 52 VCLT, the answer is that the current legal system does not allow a coerced state to make such concessions through international treaties in favour of an aggressor. While it may cause serious practical impediments to any peace process,[97] it is a logical complement to the prohibition of the use of force. If international law were to allow an aggressor to legitimise territorial gains acquired through its unlawful use of force, it would fundamentally undermine the prohibition of the use of force in international law. The principle enshrined in Art. 2(4) of the UN Charter is one of the cornerstones of the modern international legal order, aimed at maintaining peace.[98] Allowing an aggressor to retain territorial gains through coerced treaties would render this fundamental norm meaningless.

However, despite the above, the judicial practice regarding Art. 52 VCLT has been limited and often cautious. Cases such as *Fisheries Jurisdiction (UK v. Iceland)* and *Aminoil v. Kuwait* suggest that courts (tribunals) require strong evidence that coercion deprives a state of free will. Additionally, the ICJ has previously dismissed claims of coercion when the affected state did not contest a treaty's validity over an extended period. The experience with the Kumanovo Military Agreement and Lusaka Ceasefire Agreement also show that practical concerns may sometimes prevail over the legal regime.

[95] Rasmussen, *supra* note 65, pp. 47–48; Kehl, *supra* note 2; Vishchyk, Pizzi, *supra* note 22.
[96] Kehl, *supra* note 2; Schmalenbach, Prantl, *supra* note 89.
[97] Schmalenbach, Prantl, *supra* note 89.
[98] Gray, *supra* note 14, pp. 6–30.