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CHAPTER II

LAW OF TREATIES (Cont'd)

Article 13

Treaties Conflicting with a Peremptory Norm of General
International Law
(jus cogens)

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Commentary

(1) Opinion has been divided upon the question whether international law recognizes the existence within its legal order of rules having the character of jus cogens, that is, rules from which the law does not permit any derogation. Some writers, considering that the operation even of the most general rules of international law still falls short of being universal, deny that any rule can properly be regarded as a jus cogens, from which individual States are not competent to derogate by agreement between themselves.^{51/} But whatever imperfections the international legal order may still have, the view that in the last analysis there is no international public order - no rule from which States cannot at their own free will contract out - has become increasingly difficult to sustain. The law of the Charter concerning the use of force and the development - however tentative - of international criminal law presupposes the existence of an international public order containing rules having the character of jus cogens.^{52/} This being so, the Commission concluded that in codifying the law of treaties it must take the position that today there are certain rules and principles from which States are not competent to derogate by any merely bilateral or regional treaty arrangements.

^{51/} See for example G. Schwarzenberger, International Law, pp. 426-7.

^{52/} See McNair, op. cit., pp. 213-4.

(2) The formulation of the rule, however, is not free from difficulty, since there is not as yet any generally recognized criterion by which to identify a general rule of international law as having the character of jus cogens. Moreover, it is undeniable that the majority of the general rules of international law do not have that character and that States may contract out of them by treaty. The general law of diplomatic intercourse, for example, requires that certain treatment be accorded to diplomatic representatives and forbids the doing of certain acts with respect to diplomats; but these rules of general international law do not preclude individual States from agreeing between themselves to modify the treatment to be accorded reciprocally to each other's representatives. It would therefore be going much too far to state that a treaty is void if its provisions conflict with a rule of general international law.

(3) Many national systems of law have well-defined categories of unlawful agreements. In international law, however, the time does not yet seem ripe for trying to codify and define all the possible categories of "unlawful" treaties. The emergence of rules having the character of jus cogens, is comparatively recent, while international law is in process of rapid development. Accordingly, the Commission considered the right course to be to provide in general terms that a treaty is void if it conflicts with a rule of jus cogens and to leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals. Some members of the Commission felt that there might be advantage in specifying, by way of illustration, some of the most obvious and best settled rules of jus cogens in order to indicate by these examples the general nature and scope of the rule contained in the article. Examples suggested included (a) a treaty contemplating an unlawful use of force contrary to the principles of the Charter, (b) a treaty contemplating the performance of any other act criminal under international law, and (c) a treaty contemplating or conniving at the commission of acts, such as trade in slaves, piracy or genocide, in the suppression of which every State is called upon to co-operate. Other members expressed the view that, if examples were given, it would be undesirable to appear to limit the scope of the article to cases involving acts which constitute crimes under international law; and treaties violating human rights or the principle of self-determination were mentioned as other possible examples. The Commission, however, decided against including any examples of rules of jus cogens in the article for two reasons. First, the mention of some cases of treaties void for conflict with a rule of jus cogens might, even with the most careful drafting, lead to misunderstanding as to the position concerning other cases not mentioned in the article. Secondly, if the Commission were to attempt to draw up, even on a selective

basis, a list of the rules of international law which are to be regarded as having the character of jus cogens, it might find itself engaged in a prolonged study of matters which really belong to other branches of international law.

(4) Accordingly, the article simply provides that a treaty is void "if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". This provision makes it plain that nullity attaches to a treaty under the article only if the rule with which it conflicts is a peremptory norm of general international law from which no derogation is permitted, even by agreement between particular States. On the other hand, it would clearly be wrong to regard even rules of jus cogens as immutable and incapable of modification in the light of future developments. As any modification of a rule of jus cogens would today most probably be effected by the conclusion of a general multilateral treaty, the Commission thought it desirable to make it plain by the wording of the article that a general multilateral treaty establishing a new rule of jus cogens would fall outside the scope of the article. In order to safeguard this point the article defines rules of jus cogens as peremptory norms of general international law from which no derogation is permitted "and which can be modified only by a subsequent norm of general international law having the same character".

(5) The Commission considered the question whether the nullity resulting from the application of the article should in all cases attach to the whole treaty or whether severance of the offending provisions from the rest of the treaty might be admissible under the conditions laid down in article _____. Some members were of the opinion that it was undesirable to prescribe that the whole treaty should be brought to the ground in cases where only one part - and that a small part - of the treaty was in conflict with a rule of jus cogens. Other members, however, took the view that rules of jus cogens are of so fundamental a character that, when parties conclude a treaty which conflicts in any of its clauses with an already existing rule of jus cogens, the treaty must be considered totally invalid. In such a case it was open to the parties themselves to revise the treaty so as to bring it into conformity with the law; and if they did not do so, the law must attach the sanction of nullity to the whole transaction. This was the view which prevailed in the Commission and the article does not, therefore, admit any severance of the offending clauses from the rest of the treaty in cases falling under its provisions.

Article 15

Termination of treaties through the operation of their own provisions

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Commentary

(1) The majority of modern treaties contain clauses fixing their duration or the date of their termination or a condition or event which is to bring about their termination or providing for a right to denounce or withdraw from the treaty. In these cases the termination of the treaty is brought about by the provisions of the treaty itself and how and when this is to happen is essentially a question of interpreting and applying the treaty. The present article sets out the basic rules governing the termination of a treaty through the application of its own provisions.

(2) The treaty clauses are very varied.^{1/} Many treaties provide that they are to remain in force for a specified period of years or until a particular date or event; others provide for the termination of the treaty through the operation of a resolutive condition. Specific periods fixed by individual treaties may be of very different lengths, periods between one and twelve years being usual but longer periods up to twenty, fifty and even ninety-nine years being sometimes found. More common in modern practice are treaties which fix a comparatively short initial period for their duration, such as five or ten years, but at the same time provide for their continuance in force after the expiry of the period subject to a right of denunciation or withdrawal. These provisions normally take the form either of an indefinite continuance in force of the treaty subject to a right of denunciation on six or twelve months notice or of a renewal of the treaty for successive periods of years subject to a right of denunciation or withdrawal on giving notice to that effect six months before the expiry of each period. Some treaties fix no period for their duration and simply provide for a right to denounce or withdraw from the treaty, either with or without a period of notice. Occasionally, a treaty which fixes a single specific period, such as five or ten years, for its duration allows a right of denunciation or withdrawal even during the currency of the period.

^{1/} See United Nations Handbook of Final Clauses, pp. 55-73.

(3) Paragraph 1 sets out the rules governing the time at which a treaty comes to an end by the operation of the various types of terminating provision found in treaties. Some members felt that these rules were self-evident and did not really need to be stated; but the Commission considered that, although they follow directly from the application of the provisions in question, the rules are the governing rules and therefore should have a place in a codifying convention. Some members suggested that the "occurrence of any other event" sub-paragraph (c) was already covered by the "resolutive condition". As, however, a clause providing for a terminating "event" is not always expressed in the form of a condition but rather as the temporal limit of the treaty, it was thought preferable to include sub-paragraph (c) so as to ensure that no case could be said not to have been covered.

(4) Paragraphs 2 and 3 deal with cases where the treaty comes to an end through the operation of a clause providing for a right to denounce or withdraw from it. If this is only a particular example of termination through the operation of a resolutive condition, it has a special importance for two reasons. First, it is a condition which brings the treaty to an end at the will of the individual party; and, secondly, it is extremely common in multilateral treaties. Clearly, denunciation of a bilateral treaty brings the treaty itself to an end and paragraph 2 so provides. The denunciation of a multilateral treaty, on the other hand, by a single party or the withdrawal of a single party from the treaty does not normally put an end to the treaty; the effect is merely that the treaty ceases to apply to the party in question. Paragraph 3 (a) states this general rule.

(5) In some cases, a multilateral treaty, which is subject to denunciation or withdrawal, does provide for the termination of the treaty itself, if denunciations or withdrawals should reduce the number of parties below a certain figure. For example, the Convention on the Political Rights of Women^{5/} provides that it "shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than six becomes effective". In some cases the minimum number of surviving parties required by the treaty to keep it alive is even smaller, e.g., five in the case of the Customs Convention on the Temporary Importation of Commercial Road Vehicles^{6/} and three in the case of the Convention Regarding the Measurement and Registration of Vessels

5/ U.N.T.S., Vol. 193, p. 135, Art. 8.

6/ United Nations Handbook of Final Clauses, p. 58.

Employed in Inland Navigation.^{7/} In other, perhaps less frequent, cases a larger number is required to maintain the treaty in force. Clearly, provisions of this kind establish what is really a resolutive condition and, as paragraph 3 (b) states, the treaty terminates when the number of parties falls below the specified minimum. (6) A further point arises as to whether a multilateral treaty, the entry into force of which was made dependent upon its ratification, acceptance, etc., by a given minimum number of States, automatically ceases to be in force, should the parties afterwards fall below that number as a result of denunciations or withdrawals. The better opinion,^{8/} it is believed, is that this is not a necessary effect of a drop in the number of the parties below that fixed for the treaty's entry into force. The treaty provisions in question relate exclusively to the conditions for the entry into force of the treaty and, if the negotiating States had intended the minimum number of parties fixed for that purpose to be a continuing condition of the validity of the treaty, it would have been both easy and natural for them so to provide. In some cases, it is true, a treaty which fixes a low minimum number of parties for entry into force prescribes the same number for the cessation of the treaty. But there is no general practice to that effect, and the fact that this has not been a regular practice in cases where a larger minimum number, such as ten or twenty, has been fixed for entry into force seems significant. At any rate, when the number for entry into force is of that order of magnitude, it does not seem desirable that the application of the treaty should be dependent on the number of parties not falling below that number. The remaining parties, if unwilling to continue to operate the treaty with the reduced number, may themselves either join together to terminate it or separately exercise their own right of denunciation or withdrawal. Paragraph 3 (b) therefore also provides that a treaty is not terminated by reason only of the fact that the number of its parties falls below that prescribed for its original entry into force.

^{7/} Ibid., pp. 72-3.

^{8/} Cf. E. Giraud, "Modification et Terminaison des Traités collectifs" Annuaire de l'Institut de droit international, tome I, 1961, p. 62.

Article 16

Treaties containing no provisions regarding their termination

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Commentary

(1) Article 16 covers the termination of treaties which neither contain any provision regarding their duration or termination nor mention any right for the parties to denounce or withdraw from it. Such treaties are not uncommon, recent examples being the Charter of the United Nations, the four Geneva Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations. The question is whether they are to be regarded as terminable only by common agreement or whether individual parties are under any conditions to be considered as having an implied right to withdraw from the treaty upon giving reasonable notice to that effect.

(2) In principle, the answer to the question must depend on the intention of the parties in each case, and the very character of some treaties excludes the possibility that the contracting States could have intended them to be open to unilateral denunciation or withdrawal at the will of an individual party. Treaties of peace and treaties fixing a territorial boundary are examples of such treaties. The great majority of treaties, however, are not of a kind with regard to which it can be said that to allow a unilateral right of denunciation or withdrawal would be inconsistent with the character of the treaty; for the normal practice today in the case of most categories of treaties is either to fix a comparatively short period for their duration or to provide for the possibility of termination or withdrawal. No doubt, one possible point of view would be that, since the parties in many cases do provide expressly for a unilateral right of denunciation or withdrawal, their silence on the point in other cases must be interpreted as excluding such a right. Some authorities,^{1/} basing themselves on the Declaration of London of 1871 and certain State practice, take the position that an

^{1/} See article 34 of the Harvard Research Draft, pp. 1173-83; Rousseau.

individual party may denounce or withdraw from a treaty only when such denunciation or withdrawal is provided for in the treaty or consented to by all the other parties. The Declaration of London and the State practice in question, however, relate to peace treaties or other treaties designed to establish enduring territorial settlements, in other words, to treaties where an intention to admit a right of unilateral denunciation or withdrawal is excluded by the character of the treaty. In many other types of treaty the widespread character of the practice making the treaty subject to denunciation or withdrawal suggests that it would be unsafe to draw the conclusion from the mere silence of the parties on the point that they necessarily intended to exclude any possibility of denunciation or withdrawal. For this reason a number of other authorities^{2/} take the position that a right of denunciation or withdrawal may properly be implied under certain conditions in some types of treaties, and more especially in commercial treaties and in treaties of alliance.

(3) The difficulty of the problem is well illustrated by the discussions which took place at the Geneva Conference on the Law of the Sea concerning the insertion of denunciation clauses in the four conventions drawn up at that Conference.^{3/} None of the Conventions contains a denunciation clause. They provide only that after five years from the date of their entry into force any party may at any time request the revision of the Convention, and that it will be for the General Assembly to decide upon the steps, if any, to be taken in respect of the request. The Drafting Committee, in putting forward this revision clause, observed that its inclusion "made unnecessary any clause on denunciation". Proposals had previously been made for the inclusion of a denunciation clause and these were renewed in the plenary meeting, notwithstanding the view of the Drafting Committee. Some delegates thought it wholly inconsistent with the nature of the codifying conventions to allow denunciation; some thought that a right of denunciation existed anyhow under customary law; others considered it desirable to provide expressly for denunciation in order to take account of possible changes of circumstances. The proposal to include the clause in the "codifying"

^{2/} See Hall, International Law, 8th Edition, p. 405; Oppenheim, International Law, 8th Edition, Vol. 1, p. 938; McNair, Law of Treaties, pp. 501-5; Sir G. Fitzmaurice, Second Report on the Law of Treaties, Yearbook of the International Law Commission, 1957, Vol. II, p. 22.

^{3/} See United Nations Conference on the Law of the Sea, Official records, Vol. II, pp. 19, 56 and 58.

conventions was rejected by 32 votes to 12, with 23 abstentions. A similar proposal was also made with reference to the Fishing and Conservation Convention, which formulated entirely new law. Here, opponents of the clause argued that a right of denunciation would be out of place in a Convention which created new law and was the result of negotiation. Advocates of the clause, on the other hand, regarded the very fact that the Convention created new law as justifying and indeed requiring the inclusion of a right of denunciation. Again, the proposal was rejected, the vote being 25 in favour and 6 against, with no less than 35 abstentions. As already mentioned, no clause of denunciation or withdrawal was inserted in these conventions and at the subsequent Vienna Conferences on Diplomatic and Consular Intercourse the omission of the clause from the conventions on those subjects was accepted without discussion. However, any temptation to generalize from these Conferences as to the intentions of the parties in regard to the denunciation of "law-making" treaties is discouraged by the fact that other conventions, such as the Genocide Convention and the Geneva Conventions of 1949 on prisoners of war, sick and wounded, etc. expressly provide for a right of denunciation.

(4) Some members of the Commission considered that, in order to safeguard the security of treaties, the absence of any provision in the treaty should be interpreted in every case as completely excluding any right of unilateral denunciation or withdrawal. Some members, on the other hand, considered that in certain types of treaty, such as treaties of alliance, the presumption as to the intentions of the parties was the other way round, with the result that a right of denunciation or withdrawal after reasonable notice should be implied in the treaty unless there were indications of a contrary intention. Certain other members took the view that, while the omission of any provision for it in the treaty did not exclude the possibility of implying a right of denunciation or withdrawal, the existence of such a right was not to be implied from the character of the treaty alone. According to these members, the intention of the parties was essentially a question of fact to be determined not merely by reference to the character of the treaty but by reference to all the circumstances of the case. This view prevailed in the Commission and is embodied in article 16.

(5) The article states that a treaty not making any provision for its termination or for denunciation or withdrawal is not subject to denunciation or withdrawal unless "it appears from the character of the treaty and from the circumstances of its conclusion or the statements of the parties that the parties intended to admit the possibility of denunciation or withdrawal". Under this rule, the character of the treaty is only one of the elements to be taken into account and a right of denunciation or withdrawal will not be implied unless it appears from the general circumstances of the case, including the statements of the parties, that the parties intended to allow the possibility of unilateral denunciation or withdrawal. The statement of one party would not, of course, be sufficient to establish that intention, unless it appeared to meet with the express or tacit assent of the other parties. The term "statements of the parties", it should be added, was not meant by the Commission to refer only to statements forming part of the travaux préparatoires of the treaty, but was meant also to cover subsequent statements showing the understanding of the parties as to the possibility of denouncing or withdrawing from the treaty; in other words, it was meant to cover interpretation of the treaty by reference to "subsequent conduct" as well as by reference to the travaux préparatoires.

(6) The period of notice is twelve months. An alternative would be simply to say "reasonable" notice; but as the purpose of the article is to clarify the position where the parties have failed to deal with the question of the termination of the treaty, the Commission preferred to propose a specific period of notice. A period of six months' notice is sometimes found in termination clauses, but this is usually where the treaty is of the renewable type and is open to denunciation by a notice given before or at the time of renewal. Where the treaty is to continue indefinitely subject to a right of denunciation, the period of notice is more usually twelve months, though admittedly in some cases no period of notice is required. In formulating a general rule, the Commission considered it to be desirable to lay down a longer rather than a shorter period in order to give adequate protection to the interests of the other parties to the treaty.

Article 18

Termination or suspension of the operation of treaties by agreement

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Commentary

(1) The termination of a treaty or the suspension of its operation by subsequent agreement is necessarily a process which involves the conclusion of a new "treaty" in some form or another. From the point of view of international law, as stated in Article 1 of Part I of the Commission's draft Articles, a "treaty" may be any international agreement in written form, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. It is true that the view has sometimes been put forward that an agreement terminating a prior treaty must be cast in the same form as the treaty which is to be terminated or at least be a treaty form of "equal weight". This view is for example, sometimes expressed by jurists from the United States;^{38/} but it represents the constitutional practice of particular States, not a general rule of treaty law. It is always for the States concerned themselves to select the appropriate instrument or procedure for bringing a treaty to an end, and, in doing so, they will no doubt take into account their own constitutional requirements. So far as international law is concerned all that is required is that the parties to the prior treaty should have entered into an agreement to terminate it, whether they conclude that agreement by a formal instrument or instruments or by a "treaty in simplified form".

(2) Paragraph 1 of Article 18 therefore provides that a treaty may be terminated at any time by agreement of all the parties, and that the agreement may be embodied in an instrument drawn up in whatever form the parties shall decide. The paragraph further underlines that the agreement may be embodied in communications made by the parties to the depositary or to each other. In some cases, no doubt, the parties will think it desirable to use a formal instrument. In other cases, they may think it sufficient

^{38/} See an observation of the United States delegate at the 49th meeting of the Social Committee of the Economic and Social Council (E/AC.7/SR.49, p.8), to which Sir G. Fitzmaurice drew attention.

to express their consents through the diplomatic channel or in the case of multilateral treaties, by communications made through the Depositary. As to the latter procedure, in modern practice communications through the Depositary are a normal means of obtaining the consents of the interested States in matters touching the operation of the "final clauses" of the treaty; and it would seem to be a convenient procedure to use for effecting the termination of a treaty by an agreement in simplified form.

(3) Paragraph 1, as already noted, provides that the consent of all the parties to a treaty is necessary for its termination by agreement. Each party to a treaty has a vested right in the treaty itself of which it cannot be deprived by a subsequent treaty to which it is not a party or to which it has not given its assent. The application of this rule to multilateral treaties tends to result in somewhat complicated situations, because it is very possible that some parties to the earlier treaty may fail to become parties to the terminating agreement. In that event, the problem may arise whether the earlier treaty is to be regarded as terminated inter se the parties to the later treaty but still in force in other respects. Further reference to this matter in the Commentary to the next article. Here it suffices to say that, whatever the complications, it is a strongly entrenched rule of international law that the consent of every party is, in principle, necessary to the termination of any treaty bilateral or multilateral; and it is this rule which is safeguarded in the opening sentence of paragraph 1 of the present article.

(4) In the case of a multilateral treaty the question arises whether the consent of all the parties is necessarily sufficient for its termination or whether account might also be taken of the interests of the other States still entitled to become parties under the terms of the treaty. Some members of the Commission were inclined to the opinion that, if a State had not shown enough interest in a treaty to take the necessary steps to become a party before the time arrived when its termination was under discussion, there was no case for making the termination of the treaty conditional upon their consent. However, it was pointed out that quite a number of multilateral conventions, especially those of a technical character, require only two or a very small number of ratifications, or acceptances to bring them into force; and that it did not seem right that the first two or three States to deposit instruments of ratification or acceptance should have it in their power to terminate the treaty without regard to the wishes of the other States which drew up the treaty.

It was also recalled that in drafting Article 9 of Part I concerning the opening of a treaty to additional States the Commission had thought it necessary that all the States which had drawn up the treaty should have a voice in the matter for a certain period of time. The Commission decided that it ought to follow the same line in the present article, and paragraph 2 accordingly provides that until the expiry of X years the consent of the States which drew up the treaty should be required in addition to that of the actual parties. As in the case of Article 9 of Part I the Commission preferred to await the comments of Governments on the question before suggesting the length of the period during which this provision should apply. (5) Paragraph 3 provides that the rules laid down in the article apply equally to the suspension of the operation of a treaty.

Article 19

Termination implied from entering into a subsequent treaty

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Commentary

(1) The previous article concerns cases where the parties to a treaty enter into a later agreement for the express purpose of terminating the treaty. The present article deals with cases where the parties, without expressly terminating or modifying the first treaty, enter into another treaty which is so far inconsistent with the earlier one that they must be considered to have intended to abrogate it. Where the parties to the two treaties are identical, there can be no doubt that, in concluding the second treaty, they are competent to abrogate the earlier one; for that is the very core of the rule contained in the previous article. Even where the parties to the two treaties are not identical, the position is clearly the same if the parties to the later treaty include all the parties to the earlier one; for what the parties to the earlier treaty are competent to do together, they are competent to do in conjunction with other States. The sole question therefore is whether and under what conditions the conclusion of the further inconsistent treaty must be held by implication to have terminated the earlier one.

(2) This question is essentially one of the construction of the two treaties in order to determine the extent of their incompatibility and the intentions of the parties, with respect to the maintenance in force of the earlier one. Some members of the Commission felt that for this reason the question ought not to be dealt with in the present report as one of termination but should be left over for consideration at the next session at which the Special Rapporteur would be submitting draft articles on the application of treaties. However, it was pointed out that, even if it were true that a preliminary question of interpretation was involved in these cases, there was still a need to determine the conditions under which the interpretation should be held to lead to the conclusion that the treaty had been terminated. The Commission decided provisionally, and subject to reconsideration at its next session, to retain Article 19 in its present place among the articles dealing with "termination" of treaties.

(3) Paragraph 1 therefore seeks to formulate the conditions under which the parties to a treaty are to be understood as having intended to terminate it by concluding a later treaty conflicting with it. The wording of the two clauses in paragraph 1 is based upon the language used by Judge Anzilotti in his separate opinion in the Electricity Company of Sofia case,^{40/} where he said:

"There was no express abrogation. But it is generally agreed that, beside express abrogation, there is also tacit abrogation resulting from the fact that the new provisions are incompatible with the previous provisions, or that the whole matter which formed the subject of these latter is henceforward governed by the new provisions."

That case, it is true, concerned a possible conflict between unilateral Declarations under the Optional Clause and a treaty, and the Court itself did not accept Judge Anzilotti's view that there was any incompatibility between the two instruments. Nevertheless, the two tests put forward by Judge Anzilotti for determining whether a tacit abrogation had taken place appeared to the Commission to contain the essence of the matter.

(4) Paragraph 2 merely provides that the earlier treaty shall not be considered to have been terminated where it appears from the circumstances that a later treaty was intended only to suspend the operation of the earlier one. Judge Anzilotti, it is

^{40/} P.C.I.J. Series A/B, No. 77, p.92.

true, in the above-mentioned Opinion considered that the Declarations under the Optional Clause, although in his view incompatible with the earlier treaty, had not abrogated it because of the fact that the treaty was of indefinite duration, whereas the Declarations were for limited terms. But it could not be said to be a general principle that a later treaty for a fixed term does not abrogate an earlier treaty expressed to have a longer or indefinite duration. It would depend entirely upon the intention of the States in concluding the second treaty, and it is probable that in most cases their intention would have been to cancel rather than suspend the earlier treaty.

(5) The Commission considered whether it should add a further paragraph dealing with the question of the termination of a treaty as between certain of its parties only in cases where those parties alone enter into a later treaty which conflicts with their obligations under the earlier one. In such cases parties to the earlier treaty, as stressed in paragraph of the commentary to the previous article, cannot be deprived of their rights under it without their agreement, so that in law the later treaty, even if concluded between a majority of the parties to the earlier treaty, cannot be said to have terminated the earlier one altogether. There is, however, a question whether the earlier treaty terminates inter se the parties who enter into the later treaty. This question is so closely connected with the problem of the application of treaties that, for the reasons given in the Introduction to the present articles the Commission decided to defer the examination of this question until its next session when it will take up the problem of the application of treaties.