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MIKAEL ARSHAKYAN
PhD Student, Department of Public International and European Law, Institute of Law, Russian-Armenian University

ՄԻՔԱՅԵԼ ԱՐՇԱԿՅԱՆ
Հայ-Ռուսական համալսարանի իրավունքի ինստիտուտի միջազգային հանրային և եվրոպական իրավունքի ամբիոնի ասպիրանտ

МИКАЕЛ АРШАКЯН
Аспирант кафедры международного публичного и европейского права Института права Российско-Армянского университета
https://orcid.org/0009-0001-8631-9658

DO *PACTA* STILL *SERVANDA*? REASSESSING THE GENERAL RULE OF TREATY CONTINUATION IN ARMED CONFLICT

ԱՐԴՅՈ՞Ք *PACTA*-Ն ԴԵՌԵՎՍ *SERVANDA* Է. ԶԻՆՎԱԾ ՀԱԿԱՄԱՐՏՈՒԹՅԱՆ ՊԱՅՄԱՆՆԵՐՈՒՄ ՊԱՅՄԱՆԱԳՐԵՐԻ ՇԱՐՈՒՆԱԿԱԿԱՆՈՒԹՅԱՆ ԸՆԴՀԱՆՈՒՐ ԿԱՆՈՆԻ ՎԵՐԱԳՆԱՀԱՏՈՒՄԸ

PACTA ВСЁ ЕЩЁ *SERVANDA*? ПЕРЕОЦЕНКА ОБЩЕГО ПРАВИЛА О ПРОДОЛЖЕНИИ ДЕЙСТВИЯ МЕЖДУНАРОДНЫХ ДОГОВОРОВ В УСЛОВИЯХ ВООРУЖЁННОГО КОНФЛИКТА

INTRODUCTION

There are few questions upon which people concerned with the practical application of the rules of international law find the text-books less helpful than that of the effect of war upon treaties in force between belligerents.[1]

Armed conflict has ceased to be a collateral anomaly in treaty law and now carries sharp practical consequences for States and courts. At the centre lies a deceptively simple question: *What*

[1] C Hurst, 'The Effect of War on Treaties' (1921–22) 2 BYBIL 37, 37–47 ('Hurst').

does the outbreak of hostilities do to treaties already in force between the parties? The answer affects regulatory regimes, commercial undertakings and humanitarian protections alike.

The research problem addressed in this article is twofold: *Do the Draft Articles accurately reflect the contemporary customary position on the continuation of treaties during armed conflict?* And *does their formulation properly distinguish the negative rule that armed conflict does not, by itself, terminate or suspend treaties from the separate question whether a State may invoke the conflict to do so?* The article tackles this ambiguity by re-examining the "general rule of continuation" in the International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties and by analysing relevant State and judicial practice. Scholarship and practice have long moved away from the traditional presumption of abrogation towards a stability-oriented model grounded in continuity, informed by treaty subject matter and party intent. Courts and tribunals have repeatedly applied treaties even during hostilities, while doctrinal bodies such as the Institute of International Law and the ILC have attempted to rationalise that evolution. Yet significant gaps remain.

The article's central thesis is that contemporary customary international law supports a general presumption of continuity, but the wording of the Draft Articles blurs the distinction between continuity and operability. The article clarifies the content of the general rule of continuation and pairs its customary understanding with the reflection given in article 3 of the Draft Articles. Properly understood, the effects of armed conflict are not automatic but invokable, conflict does not itself terminate or suspend treaties, but it may render certain treaties or provisions susceptible to termination or suspension following a structured analysis and procedural safeguards. It is therefore suggested that Article 3 should be read and normatively reformulated, to pair the negative rule against *ipso facto* effects with an explicit susceptibility standard. Such analysis suggests a more appropriate wording of the general rule which is formed based on the will of States and prior doctrinal debates within and outside of the ILC. In this way, the analysis contributes to the interpretation of the contemporary law of treaties by clarifying the doctrinal limits of reliance on armed conflict as a ground for modifying treaty relations.

The article is separated into 2 parts, which help the gradual discovery of the issues discussed herein. Chapter 1 examines the structure and status of the Draft Articles, arguing that, with exclusion of the general continuity principle, they largely reflect progressive development rather than codification. Accordingly, the remaining Draft Articles are treated as having primarily guiding value and are addressed only insofar as they clarify the ILC's understanding of the effects of armed conflict on treaties. Chapter 2 reviews in detail the codification of the general rule of continuation, the whole process of its formation and the evolution of doctrinal approaches. It, *inter alia*, exposes the tension between 'operation' and 'susceptibility', and proposes a recalibrated statement and analytic framework that makes the invokable (not automatic) nature of the doctrine explicit. The conclusion crystallises a practical guidance for application of the rule in contemporary conflicts.

BASIC RESEARCH

1. The role and framework of Draft articles on effect of Armed Conflicts on International Treaties

1.1. Introduction to the Draft Articles

While the focus of the present article is on examination of broader scope of treaty regulation rules applicable in times of armed conflicts, the issues arising from the formulation and the contents of the Draft Articles on Effects of Armed Conflicts on Treaties (Draft Articles) remain at its centre,

as they are considered to cover the issue comprehensively and are based on a comprehensive study of the State practice and doctrine. They reflect almost a decade of research initiated by the General Assembly in 2000[2] and undertaken by the ILC from 2004 onwards.[3] The ILC completed its work in 2010 by adopting eighteen draft articles and an annex[4], recommending that the General Assembly take note of the text, append it to a resolution, and consider, at a later stage, the elaboration of a convention.[5] The General Assembly followed this recommendation in 2011[6], sought Government comments in 2014[7], and placed the topic on the agenda of its seventy second session. In 2017 it recognised the value of the Draft Articles, encouraged their use as a reference, and decided to return to the question at an appropriate time.[8]

These articles constitute a significant step in the codification and potential progressive development of the law in this field. However, their practical impact remains uncertain due to the limited State practice and scarce references in jurisprudence. Structurally, articles 3 to 7 form the core of the Draft Articles, setting out the principles and mechanisms for assessing the operability of treaties. Article 3 starts with the refusal of the presumption of discontinuation, providing that 'the existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties'. It is important here to put an emphasis on the difference between *refusal of presumption of discontinuation* and *adoption of presumption of continuation*. The first one implies a more cautious approach by setting a negative definition and leaving more room for cases when despite the armed conflict, additional circumstances linked with the armed conflict may affect the operation of the treaty or its susceptibility to termination and suspension. Such view has a firm practical foundation and is well acknowledged among international community of states. On the issue of establishing a positive formulation, the Special Rapporteur commented that 'it would be difficult to go so far, given the present state of international law'.[9] As will be discussed further in the article, article 3 carries near-transparent flaws in formulation of a rule that is so widely accepted.

Article 4 emphasizes prioritizing the initial will of the State over the treaty's nature, giving primary significance to any provisions addressing operability, intentionally avoiding the term 'expressly'[10] to allow provisions such as standard war clauses to reflect the state's intent to keep a treaty operable. Article 5 reinforces the application of general treaty interpretation rules under Articles 31 and 32 VCLT[11], clarifying connections with general treaty law without creating a new interpretative regime.

Article 6 identifies internal factors such as subject matter, object and purpose, content, and number of parties, and external factors such as duration, scale, territorial extent, and foreign

[2] ILC, 'Report on the 52nd Session' (2000) II (2) YBILC 1, para 729.
[3] International Law Commission, 'Summary record of the 2830th meeting' (56th session, 2004) YBILC vol I, 239, 241.
[4] ILC, 'Report of the International Law Commission on the Work of its 63rd Session' (2011) II YBILC, Part Two, paras 94–95, 100–101.
[5] *Ibid* para 97.
[6] UNGA, 'Report of the International Law Commission on the Work of its Sixty-Third Session' UN Doc A/66/10 (2011).
[7] UNGA, 'Effects of Armed Conflicts on Treaties: Comments and Observations Received from Governments' UN Doc A/69/495 (2014).
[8] UNGA (7 December 2017) UN Doc A/RES/72/121.
[9] Lucius Caflisch, 'First Report on the Effects of Armed Conflicts on Treaties' (2010) II(1) YBILC 91, para 34 ('Caflisch, First Report').
[10] ILC, 'Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries' (2011) vol II(2) YBILC 101, 112, art 4 para 2 ('ILC Draft Articles with Commentaries').
[11] *Ibid* 113, Article 5, para 2.

involvement. These factors without hierarchical gradation[12] guide the assessment of a treaty's susceptibility to termination or suspension.

The assessment process proceeds as follows: first, review any express provisions under Article 4, second, interpret the treaty's subject matter under Article 5 and third, consider all relevant factors under Article 6. Two further safeguards apply: Article 15 bars an aggressor State from invoking the regime, and Article 12 removes the right to terminate or suspend where the State has expressly or implicitly accepted the treaty's continued operation.

Article 7 and its annex provide an indicative list of treaties that, due to their nature and subject matter, generally continue in whole or in part. This categorization has drawn both praise and criticism.[13] Some states also highlighted its vagueness, with the UK suggesting reconsideration because the categories may not always be easily identifiable. [14] Nonetheless, the list is non-binding and indicative, reflecting a cautious approach by the drafters.[15] It creates 'a set of rebuttable presumptions based on the subject matter of those treaties: the subject matter of the treaty implies that the treaty survives an armed conflict'.[16]

While, the Draft Articles draw on extensive analysis of State practice, tribunal decisions, and doctrine, positions regarding the effectiveness of the approaches adopted by the drafters remain separated. They adopt a presumption against the automatic discontinuation of treaties and provide guidance for assessing their operability. At the same time the Articles have received mixed opinions from scholars[17] and states[18], which in relevant part are addressed further. Some criticism concerns the questionable added value of the Articles, while other critiques cast doubt on their normative usefulness. The following section will uncover their normative character by drawing a line between the provisions that are reflecting customary law and the ones that are of merely guiding value.

1.2. Customary character of the Draft Articles and their relationship with the VCLT

In order to shed light on the existing framework regarding the operation of treaties in times of armed conflict and to provide doctrinal guidance for practical use, it is necessary, after examining the content of the Draft Articles, to clarify their practical implications and legal authority.

This section considers the role of the Draft Articles as the culmination of the ILC's work on the topic. The ILC was established to support Article 13(1)(a) of the UN Charter, which mandates the General Assembly to encourage both the progressive development and codification of international law.[19] States have traditionally resisted granting the ILC law-making authority, limiting its mandate

[12] *Ibid* 113, Article 6, paras 1-2.
[13] Zrilič notes: 'While the classification approach ensures greater clarity, it is also problematic because it creates artificial categories based on one feature of a treaty' in Jure Zrilič, 'The Effects of Armed Conflicts on Investment Treaties' in *The Protection of Foreign Investment in Times of Armed Conflict* (Oxford 2019) 61.
[14] *Ibid* SR.20, para 1 (UK).
[15] Lucius Caflisch, 'First Report on the Effects of Armed Conflicts on Treaties' (2010) II(1) YBILC 91, para 53 ('Caflisch, First Report').
[16] ILC, Draft Articles with Commentaries (n 10) 120, Annex, para 2.
[17] Ryk-Lakhmann, *The Protection of Foreign Investments in Armed Conflicts* (PhD thesis, University College London 2019) 117-118 ('Ryk-Lakhmann'), Benny Tan Zhi Peng, 'The International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties: Evaluating the Applicability of Impossibility of Performance and Fundamental Change' (2013) 3 Asian J Intl L 51, 51–76; T Ackermann, *The Effects of Armed Conflict on Investment Treaties* (Cambridge University Press 2022) ch 2, 52-65 ('Ackermann'); Zrilič (n 13) 60-62.
[18] See ILC, 'Effects of Armed Conflicts on Treaties: Comments and Information Received from Governments' (UN Doc A/CN.4/622, 15 March 2010) (China, Colombia, Ghana, Poland) 125.
[19] United Nations, 'Statute of the International Law Commission' in *The Work of the International Law Commission* (9th edn, UN 2017) 283–90.

to these two functions.[20] Progressive development concerns areas not yet regulated or insufficiently developed in State practice, while codification involves formulating and systematising rules where practice, precedent and doctrine already exist.[21] Thus, an important question is whether the Draft Articles are seen by states as progressive development or codification of the matter. Understanding their normative character will lead to the framing of their practical usefulness, as well as create a possibility for assessment of adherence of Draft Articles to such customary rules, namely regarding issues of formulation of general rule of continuity.

The Draft Articles on the effects of armed conflicts on treaties, as has been stated above, have been met both with praise and criticism, one bone of contention being the customary foundation and legal authority of the articles. Notwithstanding the research conducted by the ILC in pursuit of revealing and codifying the State practice concerning the topic, majority of states expressed the view, that they do not see the Draft Articles as anything more than a guidance,[22] meanwhile some states, although recognizing them as a 'valuable resource' saw certain articles as a step too forward, regulating 'mainly untouched domain', leaning 'more towards progressive development than codification'.[23] During the meeting of the Sixth Committee African states expressed the view that they 'did not support [the] elaboration [of the Draft Articles] in the form of a binding legal instrument' because of their flaws.[24] Russia refused the possibility of regarding the articles 'as reproducing norms of international customary law', adding that 'they could be useful as a guide for States and might enable future practice to develop in a more precise framework'.[25] Similarly, delegation of the United States asserted that 'the Draft Articles were best used as a resource to which States might refer when determining the effect of particular armed conflicts on particular treaties'.[26]

In 2014 Belarus, by endorsing 'the broadly shared view reflected in the draft articles that an armed conflict did not ipso facto terminate or suspend international treaties', hinted on accepting it as a customary rule in the form given in article 3, although refraining from elaborations concerning customary character of other articles.[27] Customary character of the rule enshrined in article 3 was similarly upheld by number of states.[28] Greece on its behalf acknowledged the principle of continuity and endorsed the general approach of the Draft Articles without touching upon their customary character.[29] Argentinian delegation stated that there was no general practice among states on the issue.[30]

[20] *Ibid* article 1(1).
[21] *Ibid* article 15.
[22] UNGA Sixth Committee, 69th Session, 18th Meeting (31 October 2014) UN Doc A/C.6/69/SR.18, para 38 (India) ('UNGA Sixth Committee, 18th Meeting'); UNGA Sixth Committee, 72nd Session, 17th Meeting (16 October 2017) UN Doc A/C.6/72/SR.17, paras 8 (Australia), 16 (Sudan), 24 (Bangladesh), 33 (Iran), 38 (Estonia), 40 (Malaysia), 43 (Saudi Arabia) ('UNGA Sixth Committee, 17th Meeting').
[23] UNGA Sixth Committee, 17th meeting (n 22), paras 6 (Finland on behalf of the Nordic Countries) and 17 (Singapore); UNGA Sixth Committee, 18th meeting (n 22), para 6 (Finland on behalf of the Nordic Countries) and para 17 (Singapore).
[24] UNGA Sixth Committee, 18th meeting (n 22), para 8 (South Africa on behalf of the African Group); UNGA Sixth Committee, 17th meeting (n 22), para 5 (Algeria on behalf of the African Group) and para 27 (South Africa).
[25] UNGA Sixth Committee, 18th meeting (n 22), para 20; UNGA Sixth Committee, 17th meeting (n 22), para 18.
[26] UNGA Sixth Committee, 18th meeting (n 22), para 46; UNGA Sixth Committee, 17th meeting (n 22), para 22.
[27] UNGA Sixth Committee, 18th meeting (n 22), para 13-14.
[28] *Ibid* (Singapore) para 27, (India) para 38
[29] *Ibid* para 39.
[30] *Ibid* para 43.

Such *un*acceptance of the articles by states clearly shows absence of a formed *opinio juris,* which, paired with questionable State practice strips the Draft Articles of any possibility of creating or reflecting customary rules. Therefore, ILC's work falls in the realm of progressive development rather than codification. Hence, it is only logical that the doctrinal views are not acknowledging the customary character of the Articles.[31] This is of course without prejudice to the general principle enshrined in article 3[32], which has been supported by the states almost unanimously and, as shown earlier, is based on sufficient amount of practice to be accepted indicative of international custom.

In 21st century the tribunals have rarely touched upon the issue of effects of armed conflicts on treaties. One of the recent instances being the discussion unfolded in the framework of Eritrea-Ethiopia Claims Commission in its Partial Award in Claim 7.[33] Interestingly, at the first glance, this case suggests, that the main principles of continuity, which form the foundation of Draft Articles, are not applicable by establishing that 'there is a broad consensus that bilateral treaties, especially those of a political or economic nature, are at the very least suspended by the outbreak of a war'.[34] This decision has frequently been interpreted in this way[35] and criticised for such approach[36] in the scholarship as well. However, a more nuanced and careful analysis shows a different reality. While it lacks a direct link to the Draft Articles or the general rule of treaty continuity, it nevertheless looks at the 'nature and objectives' of the treaties at hand. Considering this, Ryk-Lakhmann suggests that the review of EECC's jurisprudence 'demonstrates that the Commission's decision is mostly consistent, but not fully congruent, with the ILC Articles and law that they reflect'.[37] This brought him to a conclusion that 'arguably then, with a grain of context, the jurisprudence of the Commission does not take away from what was established as the prevailing legal position'[38], thereby rejecting the seemingly present contradiction between the prevailing position and the position of the tribunal.

Although the Commission considered the nature and objectives of the treaties and thereby approached elements of the assessment later reflected in the Draft Articles, it would go too far to treat its reasoning as coherently aligned with the prevailing interpretation of the general rule of treaty continuity. In Guris v Syria, the tribunal considered the treaty at issue before it to be of a fundamentally different nature from those examined by the EECC and rather than rejecting the Commission's reasoning, it applied a similar analytical framework while emphasising the differences in the nature and purpose of the treaty that justified a different conclusion.

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[31] Yaël Ronen, 'Treaties and Armed Conflicts' in Christian J Tams, Antonios Tzanakopoulos and Andreas Zimmermann (eds), *Research Handbook on the Law of Treaties* (Edward Elgar 2014) 548; Federica Paddeu, 'Self-Defence as a Circumstance Precluding Wrongfulness: Understanding Article 21 of the Articles on State Responsibility' (2015) 85 *BYBIL* n 123; Ackermann (n 17) 59–62.

[32] UNGA Sixth Committee, 17th Meeting (n 22) para 23 (Bangladesh); UNGA, 'Effects of Armed Conflicts on Treaties: Comments and Information Received from Governments' UN Doc A/65/95 (2010) 2 (El Salvador); UNGA Sixth Committee, 18th Meeting (n 22) paras 10, 13, 15, 27, 36 (South Africa on behalf of the African Group; Belarus; Russia; Singapore; India); Arnold N Pronto, 'The Effect of War in Law: What Happens to Their Treaties When States Go to War?' (2013) 2(2) *Cambridge Journal of International and Comparative Law* 227, 235.

[33] Eritrea-Ethiopia Claims Commission, PCA Case No. 2001-02, *Partial Award: Economic Loss Throughout Ethiopia – Ethiopia's* Claim 7 (19 December 2005).

[34] *Ibid* para 18.

[35] M Paparinskis, 'Circumstances Precluding Wrongfulness in International Investment Law' (2016) 31(2) *ICSID Review – Foreign Investment Law Journal* 484, 492.

[36] Ackermann (n 17), 60.

[37] Ryk-Lakhmann (n 17) 125 (with reference to S Murphy, M Paparinskis, and others, *Litigating War: Mass Civil Injury and the Eritrea-Ethiopia Claims Commission* (OUP 2013)).

[38] Ryk-Lakhmann (n 17), 126.

In the same Guris v Syria the Tribunal applied the steps given in the Draft Articles and came to the conclusion that the obligations under the BIT at issue were 'not inexorably contingent upon the absence of armed conflict between the States Parties' and concluded that it continued its operation notwithstanding the existence of an armed conflict. It agreed with ILC's approach and called it 'consistent with other rules of general international law which protect private rights at times of uncertainty or dispute in international relations'.[39]

Accordingly, it can be deduced from the abovesaid, that although with occasional exceptions the general principle of continuation of treaties is the prevailing view in international law and has a significant support among the states to an extent where it reflects customary international law. However, the remaining substantial provisions of the Draft Articles have insufficient State practice and *opinion juris* to be considered customary.

2. The intricacies of formulation and evolution of the general rule of continuation

Taking into account the guiding role of the Draft Articles it is important insure that, when looking at them States encounter as little confusions as possible and that their interpretations of the articles do not differ significantly. The central argument of the article is that despite such importance, the ILC has failed to adopt a text that would provide relatively uniform understanding, especially regarding the general principle of legal stability and continuity. Further, it will be shown that Draft article 3, although widely endorsed by states and aimed at reflecting the customary principle of continuity, is not enjoying a uniform interpretation neither from states nor from members of the ILC.

To unfold the raised contradiction it is appropriate to start with the wording of articles 3-7. Particularly, Article 3 and 4 talk about operation of the treaty, cumulatively stating that unless there is an express provision on treaty's operation in situations of armed conflict, armed conflicts *ipso facto* do not terminate or suspend the operation of the treaty. If looked at purely textually, emphasis here is on the rejection of automatic discontinuation of the operation of the treaty itself due to existence of armed conflict, without implied actions from states to be made. Hence, it can be assumed that the possibility of automatic application of the effect of armed conflicts to treaties is implied. Same with the wording given in article 7: '… involves an implication that they continue in operation…' However, looking at articles 5 and 6 we encounter another terminology, where the 'susceptibility' of treaty to be terminated seems to be at question. According to Article 5 'the rules of international law on treaty interpretation shall be applied to establish whether a treaty is *susceptible* to termination, withdrawal or suspension in the event of an armed conflict'. Same with Article 6: 'In order to ascertain whether a treaty is *susceptible* to termination, withdrawal or suspension …'. Does such incoherency mean that the rules of interpretation enshrined in Articles 5 and 6 are not applicable in establishing whether the treaty may be automatically abrogated by the fact of armed conflict? Following the same line, we look at Articles 9, 14 and 15. Article 9 talks about a duty of notification in cases, when a State wishes to terminate, withdraw from or suspend the treaty as consequence of armed conflict, which obviously is implying a non-automatic application of the effect, but rather a right to be invoked if intended. Similarly, Articles 14 and 15 view the effects as entitling the State to exercise a right rather than affecting treaty relations by themselves. Moreover, looking at the final Articles prepared by the IIL in 1985, it can be seen that articles 7-9 also make

[39] *Güriş and others v Syrian Arab Republic*, ICC Case No 21845/ZF/AYZ, Final Award (31 August 2020) para 158.

clear that the State gains *a right* to terminate or suspend.

The main issue here is that when talking about being susceptible to being terminated or suspended, a presumption is implied that the treaties are in any case operating in times of armed conflicts, notwithstanding their subject matter or the characteristics of the conflict, unless an action is taken by the state, meanwhile article 3, 4 and 7 talk about (non-)operation despite the action. But since in the commentaries it is stated that article 5 follows from article 4[40] and that article 6 derives from article 3[41], the problem appears to be more rooted than it seems. Such difference can meaningfully alter the prospects of application of the principle of treaty continuation in practice. Therefore, a thorough analysis of preparatory works of the Drafts Articles is needed. The question to be answered is (1) *whether armed conflicts can automatically bring about the termination, withdrawal or suspension of a treaty, notwithstanding the will of state?* In other words, *is the effect of the armed conflict still automatic, as it was historically?* After addressing this question, the final part of the present chapter will turn to the wording of the article 3 of Draft Articles which is aimed at crystalising the general rule of continuation in order to assess (2) *whether its wording accurately reflects the meaning encapsulated within the customary rule*, a task in which, as the author argues, it does not succeed. Special reference is made to Article 3 due to its customary character, in contrast to the other Draft Articles, which possess primarily guiding value and are addressed in this chapter only insofar as they clarify the customary effects of armed conflict on treaties and assist in interpreting the general principle of continuity.

The question of automatic application of the effect of armed conflicts has been stressed already in the beginning of the study on the topic by the Secretariat in its memorandum in 2005. The Secretariat noted, that 'if [the effect of armed conflict on treaties] is automatic rather than invokable – then it is of very great legal significance, making this question one of the most important of all the questions that a study of the effect of armed conflict on treaties presents'.[42] As an expository remark, Secretariat made a point that later appeared somewhat 'prophetic', stating that 'ironically, the question of whether the effect of armed conflict is invokable or automatic is one that has generated surprisingly little discussion among commentators'.[43] Going forward, the prophecy was that this question remained without a decisive answer[44], despite being of 'very great legal significance' and 'one of the most important of all the questions that [the] study … presents'.

Unfortunately, all certainty and clarity are lost when looking at ILC's deliberations and State opinions on the issue. In his First report the Special Rapporteur referred the effect on treaties arising from the occurrence of war as a 'right to abrogation'[45], although acknowledging that there was still 'no generally accepted opinion' on the issue.[46] Moreover, when referring to Article 8, which was essentially the prototype for Articles 9-12 of the final Draft, Special Rapporteur noted

[40] ILC, Draft Articles with Commentaries (n 10), art 5 para 1.
[41] *Ibid* art 6 para 1.
[42] International Law Commission, 'Report of the International Law Commission on the Work of its Fifty-Seventh Session' (2005) UN Doc A/CN.4/550, para 126 ('ILC, *Fifty-Seventh Session Report*').
[43] *Ibid* para 126.
[44] *2837th Meeting* (18 May 2004) UN Doc A/CN.4/SR.2837 para 44, ('ILC, 2837th meeting'); *2927th Meeting* (13 July 2006) UN Doc A/CN.4/SR.2927 para 37, ('ILC, 2927th meeting'); International Law Commission, 'Comments and Information Received from Governments' (62nd Session, 2010) UN Doc A/CN.4/622 and Add.1, art 3 (Poland).
[45] Ian Brownlie, 'First Report on the Effects of Armed Conflicts on Treaties' (2005) vol II(1) *Yearbook of the International Law Commission*, para 5 ('Brownlie, First Report').
[46] *Ibid* para 4.

that 'suspension or termination does not take place *ipso facto* and by operation of law'[47] and repeated this position in his Third Report.[48] This evidently contradicts the possibility of automatic application, and requires a will and action to take place. Meanwhile, as shown later, several states and Commission members lean towards an 'automatic' effect in certain cases, which excludes the will of states. Based on this logic and State practice, such position was critiqued, through disagreeing that the termination or suspension took place *ipso facto* and coming to a 'regrettable but inevitable conclusion' that there were certainly instances in which a treaty could be regarded as automatically suspended.[49]

Briggs also spoke about 'a right to suspend' rather than suspension.[50] In the sources cited by the Special Rapporteur an ambiguity is outlined concerning the ultimate position, whether or not treaties can be abrogated by armed conflicts automatically in certain cases. For instance, when Oppenheim, edited by Lauterpacht, asserts that 'the opinion is pretty general that war by no means annuls *every* treaty'[51], it can be argued that the word 'every' implies that such exceptions exist. Similarly, when McNair states: '… war does not *per se* put an end to pre-war treaty obligations …'[52], where the notion of '*per se*' may be seen as a reservation that the mere fact of outbreak of conflict itself does not affect the treaties, but may have an effect under certain circumstances, such as for example incompatibility of the treaty with state of armed conflict. Otherwise, if the statement was applicable to all cases the usage of the term '*per se*' would just be unnecessary.

Such subtle line of intricate perception of usage of terms, whether Latin or English, followed throughout the whole process of deliberations, especially concerning Article 3, where terms '*ipso facto*', 'necessarily', 'automatically' and 'by that very fact' were subject of extensive debates.[53] Similarly, the term 'right to' suspend or terminate was used by the ILC members more often[54], which confronts the idea of automatic suspension or termination.

Special Rapporteur addressed the debates in IIL and cited Ms. Denise Bindschedler-Robert, who noted that 'the purpose of the article was not to prevent the termination of treaties in force in case of an outbreak of an armed conflict, but to specify that such outbreak did not necessarily, and of its own accord, bring about the termination of treaties in force'.[55] Accordingly, the line of

[47] *Ibid* para 119.
[48] Ian Brownlie, 'Third Report on the Effects of Armed Conflicts on Treaties' (2007) vol II(1) *Yearbook of the International Law Commission* 11, para 57 ('Brownlie, Third Report').
[49] ILC, 2927th meeting (n 44) para 53.
[50] Herbert W Briggs (ed), *The Law of Nations* (2nd edn Appleton-Century-Crofts 1952) 944.
[51] Lassa Oppenheim, *International Law: A Treatise, vol II, Disputes, War and Neutrality* (7th edn, Hersch Lauterpacht ed, Longmans 1952) 302.
[52] Robert Phillimore, *Commentaries upon International Law*, vol 3 (Butterworths 1857) 456 ('Phillimore'); Arnold McNair, *The Law of Treaties* (OUP 1961) ('McNair, *Law of Treaties*') ch 43, 697.
[53] See, for example, Secretariat, 'Topical Summary of the Discussion Held in the Sixth Committee of the General Assembly during its Sixty-First Session' (2006) UN Doc A/CN.4/577, para 88 ('Topical Summary, Sixth Committee, 61st session'); Brownlie, First Report (n 45) para 28; Brownlie, Third Report (n 48) para 18; Secretariat, 'Topical Summary of the Discussion Held in the Sixth Committee of the General Assembly during its 62nd Session' (2007–08) UN Doc A/CN.4/588, para 128; Secretariat, 'Topical Summary of the Discussion Held in the Sixth Committee of the General Assembly during its 63rd Session' (2008–09) UN Doc A/CN.4/606, para 14; ILC, 2837th Meeting (n 44) para 53; 2896th Meeting UN Doc A/CN.4/SR.2896, para 59 ('ILC, 2896th Meeting'); 2897th Meeting UN Doc A/CN.4/SR.2897, para 44 ('ILC, 2897th Meeting'); ILC, 2927th Meeting (n 44) paras 8, 53, 106; 2928th Meeting UN Doc A/CN.4/SR.2928, para 53; 3056th Meeting (3 June 2010) UN Doc A/CN.4/SR.3056, para 87.
[54] ILC, 2837th meeting (n 44) para 62.
[55] Institute of International Law, *Annuaire de l'Institut de Droit International* (vol 61, part I, 1985) 8.

thought that the historical position, according to which armed conflict automatically abrogated all treaties, should be and had been replaced by the view, that mere outbreak of armed conflict, did not *ipso facto* terminate or suspend treaties in force between parties to the conflict can be seen in the works of the Commission.[56]

Nevertheless, another critical position, hinting on existence of exceptions to that rule, also existed.[57] According to it 'a general principle of continuity seemed unrealistic' and 'in certain situations, the outbreak of an armed conflict would indeed cause the termination or suspension of a treaty *ipso facto*', such instances *inter alia* being bilateral political or military alliance treaties, such as the Ribbentrop-Molotov Pact in time of the outbreak of the German-Soviet conflict in 1941[58] or a demarcation treaty or a treaty establishing political union.[59] It was also underlined that 'several instances of practice to which both the report and the Secretariat memorandum referred appeared to suggest […] - that armed conflicts did lead to the automatic suspension of various categories of treaty relations, in full or in part'[60], thereby refusing to ignore such evidence. Respectively, it was noted that 'the articles should not rule out the possibility in some cases of automatic suspension or termination'.[61] This was later acknowledged by the Special Rapporteur and clarified that as another suggestion, 'the provision could simply state that the outbreak of armed conflict did not necessarily terminate or suspend the operation of any treaty'[62], which was seen by some members as suggestion that '*ipso facto* termination was the exception rather than the rule'.[63] Nevertheless, at least one member found that the Special Rapporteur did not give enough credit to these arguments and in continuation of this critical approach suggested to switch the term '*ipso facto*' with the term 'necessarily', which in his opinion suggested a possibility of suspension or termination of the treaty in some cases but not in others.[64] Others mentioned that the term 'necessarily' implied that armed conflicts *might*, under certain circumstances, have automatic and direct effect, whereas other options would mean that armed conflicts as such would never have such an effect and could only through a procedure.[65]

Some of the representatives in the Sixth Committee also welcomed the usage of 'necessarily', since it made allowance for the abrogating effect of war on some treaties[66], while others opposed it.[67]

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[56] International Law Commission, *Yearbook of the International Law Commission* (2004) vol I, ch 5, para 142 ('ILC YB 2004 vol I'); 2834th Meeting UN Doc A/CN.4/SR.2834, para 72.
[57] ILC YB 2004 vol I (n 56) ch 5, para 143; 2838th Meeting UN Doc A/CN.4/SR.2838, para 23; 2839th Meeting UN Doc A/CN.4/SR.2839, para 16 ('ILC, 2839th Meeting'); ILC, 2897th Meeting (n 53) para 9; Secretariat, 'Topical Summary of the Discussion Held in the Sixth Committee of the General Assembly during its 60th Session' (2005) UN Doc A/CN.4/560, para 55.
[58] ILC, 2839th meeting (n 57) para 16.
[59] ILC, 2837th meeting (n 44) para 52.
[60] *2835th Meeting* (17 May 2004) UN Doc A/CN.4/SR.2835 para 11.
[61] ILC YB 2004 vol I (n 56) chp5, para 143.
[62] Ian Brownlie, 'Second Report on the Effects of Armed Conflicts on Treaties' (2006) vol II(1) *YBILC* 93, para 16; ILC, 2896th Meeting (n 53) para 6.
[63] *2898th Meeting* (24 July 2006) UN Doc A/CN.4/SR.2898 para 25.
[64] ILC, 2896th meeting (n 53) para 59.
[65] ILC, 2927th meeting (n 44) para 106.
[66] Topical Summary, Sixth Committee, 61st session (n 53) para 88.
[67] Austria, UNGA Sixth Committee, 60th Session, *18th Meeting* (4 October 2005) UN Doc A/C.6/60/SR.18 para 27; Colombia, UNGA Sixth Committee, 61st Session, *18th Meeting* (3 October 2006) UN Doc A/C.6/61/SR.18 para 65; Jordan, ibid para 87; Malaysia, UNGA Sixth Committee, 61st Session, *19th Meeting* (4 October 2006) UN Doc A/C.6/61/SR.19 para 51.

Some Commission members agreed with the term '*ipso facto*' but still remained of the opinion that the outbreak of a conflict 'did not inexorably lead to the suspension or termination'.[68] The practice of international organizations also suggested an existence of a ground for taking a decision, rather than automatic effect on treaties.[69]

Another suggestion was that 'article 3 might be interpreted to mean that an armed conflict *did not always* terminate or suspend the operation of a treaty', establishing 'a presumption, or general principle, [not] in favour of termination or suspension'.[70] Therefore, the article was suggested to be paraphrased to 'in general, the outbreak of an armed conflict does not lead to…', which emphasized the existence of exceptions from the general rule of continuation.[71] This formulation was also favoured by other members, who were struggling to accept the position that outbreak of hostilities never entailed suspension or termination, stating that the proposed formulation 'better captured the idea that it could not be taken for granted that termination or suspension never took place'.[72] In 2008, the ILC summed up its position stating that Article 3 shifted the historical legal position and 'established a presumption that an outbreak of armed conflict does not as such cause the suspension or termination of the treaty'.[73] At this point of the study, general consensus could be drawn out already that Draft Article 3 established the principle of continuity with possibility of exceptions to it. However, the issue of automatic application or application through invoking a right still raised uncertainty.

Another instance being the view expressed by the ILC, where, parallelly to recognizing the *ipso facto* effect of the conflict[74], it was clarified that withdrawal could not be included in the text of Article 3 since it involved a conscious decision, whereas the article dealt with the automatic application of law.[75] However, despite backing the automatic application of law and rejecting involvement of conscious decision, the ILC continued establishing a duty of notification in Article 8, while recognizing the right of another State party to the treaty to raise an objection.[76]

Clearly, the IIL during its studies was aware of such exceptions, since those were brought up during their deliberations as well, example being the treaties of friendship, commerce and navigation, which must be suspended ipso facto by the outbreak of hostilities.[77] The Rapporteur of IIL at the time used the term 'generally', when referring to the general idea expressed in article 2 of IIL Articles[78], which again hints on the possibility of deviation from that rule.

The fourth report of the Special Rapporteur concentrated on the procedure of suspension and termination by adapting the process of notification to peculiarities of state of armed conflicts. He saw the process of notification as 'a part of the procedural safeguards militating against unilateral

[68] ILC, 2897th meeting (n 53) para 44.
[69] International Law Commission, 'Comments and Observations Received from International Organizations' (60th Session, 2008) UN Doc A/CN.4/592 and Add.1 para 12.
[70] ILC, 2927th meeting (n 44) paras 28-29 (emphasis added).
[71] *Ibid* paras 28-29, 90.
[72] *Ibid* para 53.
[73] International Law Commission, 'Report of the International Law Commission on the Work of its Sixtieth Session' (2008) UN Doc A/63/10, ch V, art 3, para 1 ('ILC Report 2008').
[74] *ILC Report 2008* (n 73) art 3, para 5; International Law Commission, 2973rd Meeting (27 May 2008) UN Doc A/CN.4/SR.2973, para 32 ('ILC, 2973rd Meeting').
[75] *ILC Report 2008* (n 73) art 3, para 5; ILC, 2973rd Meeting (n 74) para 54.
[76] ILC Report 2008 (n 73), art 8 para 1.
[77] Institute of International Law, *Annuaire de l'Institut de Droit International* (vol 61, part II, 1986) 215.
[78] *Ibid* 216.

action, and creating inducements to resort to a process of dispute settlement'[79], also confirming that 'the process of notification is congruent with this regime of stability'.[80] The Second Special Rapporteur in his first report saw no debate regarding the notion that the outbreak of armed conflict does not, in itself, entail termination or suspension, suggesting that there are agreements which survive due to their subject matter or attendant circumstances.[81] In the same report he again highlighted the discretion of intention to suspend or terminate, which then brought about the duty to notify, without which 'the rules set out in the draft articles would become largely theoretical'.[82] To track the essence of his approach, which ultimately was put in the foundation of the Draft Articles, we refer to the following statement: 'draft article 3 specified that termination was not automatic, while draft articles 4 and 5 and the annex provided criteria for determining whether a treaty survived in whole or in part'[83], which was followed by a remark made by another member that 'the application of that provision should not depend on the discretionary judgement of the parties and that the draft articles should apply automatically as soon as the material conditions defined in that commentary were fulfilled'.[84] The purpose of article 3 was seen as preservation of *pacta sunt servanda* principle and preservation of treaty relations in times of instability[85], yet acknowledging some exceptions, which were determined through articles 4-7.[86] Nonetheless, some members of the Committee saw vagueness in the adopted approach.[87] Governmental positions from 2010, unsurprisingly, evidenced the vagueness by highlighting some unsolved issues on the matter[88], which brings back the initial questions asked in the beginning of the chapter.

In answer to that question, it is important to underline the conclusion that can be followed from the analysis, namely that States, ILC members and the Special Rapporteurs seemed to give different meanings to the term '*automatic application*'. Moreover, sometimes it was talked about automatic application of the articles and effect of armed conflicts on treaties (EACT) doctrine, in other cases about automatic termination and suspension. To be clear, the term 'automatic' is understood by the author as *effect of armed conflicts on treaties, which is independent from the will of a state*. The existence of any portion of will, which barres the termination or suspension of a treaty makes the effect non-automatic.

Statements by the Secretariat and the First Special Rapporteur show that in the beginning of the study the idea that in some cases automatic termination or suspension *per se* due to armed conflict was accepted as possible. However, a shift of that general idea took place in the process.

[79] Ian Brownlie, 'Fourth Report on the Effects of Armed Conflicts on Treaties' (2008) vol II(1) *YBILC* 7, para 31.
[80] *Ibid* para 33.
[81] Caflisch, First Report (n 15) para 33.
[82] Caflisch, First Report (n 15) para 82, 89.
[83] International Law Commission, *3051st Meeting* (28 May 2010) UN Doc A/CN.4/SR.3051 para 25 ('ILC, 3051st Meeting'); International Law Commission, *3053rd Meeting* (1 June 2010) UN Doc A/CN.4/SR.3053 para 20; International Law Commission, *3054th Meeting* (2 June 2010) UN Doc A/CN.4/SR.3054 para 53 ('ILC, 3054th Meeting'). See also International Law Commission, *3052nd Meeting* (31 May 2010) UN Doc A/CN.4/SR.3052 para 14.
[84] ILC, 3051st Meeting (n 83) para 66. See also International Law Commission, *3055th Meeting* (4 June 2010) UN Doc A/CN.4/SR.3055 para 68 ('ILC, 3055th Meeting').
[85] International Law Commission, *3059th Meeting* (9 June 2010) UN Doc A/CN.4/SR.3059 para 36; International Law Commission, *3060th Meeting* (10 June 2010) UN Doc A/CN.4/SR.3060 para 7.
[86] International Law Commission, *Report of the Drafting Committee* (2011) UN Doc A/CN.4/L.777 paras 16–17.
[87] ILC, 3054th Meeting (n 83) para 27-28; ILC, 3055th Meeting (n 84) para 70.
[88] International Law Commission, 'Comments and Information Received from Governments' (62nd Session, 2010) UN Doc A/CN.4/622 and Add.1, art 3 (Poland), art 8 (Switzerland) para 4.

As Kolodkin mentioned in 2005, the rule of the automatic effects of armed conflicts on treaties at least as an absolute concept, no longer existed.[89] Given that, it can be concluded that in the meaning of the Draft Articles armed conflicts can never automatically bring about the termination, withdrawal or suspension of a treaty, notwithstanding the will of state. The Draft Articles deviated from the original EACT doctrine, instituted a procedure specific to circumstances present in times armed conflicts, which contains a need for action from a State to trigger the right of termination or suspension, trough notification procedure in accordance with Article 9. Consequently, such procedure means that in cases, when a State is unwilling to terminate or suspend the treaty, it remains in force, notwithstanding its nature or the character of the armed conflict. Hence, when framing the essence of the Draft Articles the following phases of historical evolution of the EACT doctrine through time can be extracted: (1) All treaties are abrogated automatically, (2) Some of treaties are abrogated automatically, (3) No treaties are abrogated automatically, but can be abrogated, if they meet the requirements and there is a will of state. Thus, the purpose of articles 4-7 is to help distinguishing the instances where armed conflict makes the treaty susceptible to termination or suspension.

Taking this into account, the debates around the wording of Article 3 prove to be justified, yet unsolved completely, since the final wording does not reflect this idea and creates confusions. Existence of the term '*ipso facto*' and reference to 'operation' rather than susceptibility of termination or suspension may falsely lead to interpretation of the article as allowing in some cases the automatic termination or suspension if certain requirements are present, regardless of state's actions. Therefore, to fully and correctly integrate the idea of the customary principle of continuity into the Draft Articles and duly codify the purpose given to Article 3, its wording should have included both ideas that: (1) The existence of an armed conflict does not automatically terminate or suspend the operation of treaties, and (2) The existence of an armed conflict does not necessarily make the treaty susceptible to termination or suspension. In this way the first element states the shift from the old EACT doctrine and the second element forms the scope of the contemporary approach without confusions. The second element is where the answer concerning application of EACT doctrine to each type of treaty must be found. Thereby, the relevant question in the meaning of Draft Articles is whether those treaties are susceptible to termination or suspension in times of armed conflicts, which can be answered by applying the guidance given in the Draft and other criteria based on objective factors and subject-matter of the treaty to see if the treaty defies the 'weak rebuttable presumptions' given in the Article 7 and the Annex or confirms them.

CONCLUSION

His article has led to the conclusion that the prevailing position in contemporary international law is the continuity of treaty relations during armed conflict, yet that principle remains ambiguously expressed in the Draft Articles and is occasionally approached differently in arbitral practice. By disentangling continuity as a default legal relationship from the separate, invokable consequences of conflict, the analysis demonstrates that the Draft Articles neither fully codify nor clearly express the current customary law. Article 3, which is intended to reflect that rule, does not entirely correspond to its customary content, while the remaining provisions primarily perform a guiding function by clarifying how the effects of armed conflict on treaties may be assessed in practice. They provide

[89] ILC, 2837th meeting (n 44) para 51.

guidance that requires careful interpretation if they are to support stability in treaty relations while permitting measured exceptions.

This article's contribution lies in clarifying the conceptual and practical distinction between automatic termination and invokable suspension, and in proposing a reformulated reading of Article 3 that more accurately reflects State practice and the demands of legal certainty. Treaty continuity is concluded to be an invokable ground which can apply only on condition of State's intent. It is subject to many limitations and creates a very narrow set of circumstances to allow for termination or suspension in times of armed conflicts. This strengthens coherence within the law of treaties at precisely those moments when its stability is most strained. The broader implication is that treaty law should not be viewed as a regime that collapses under the pressure of armed conflict but rather as one that adapts through procedural safeguards and principled interpretation.

Future research may further examine how conflict affects specific categories of treaties and assess whether the Draft Articles align with general international law or whether a separate ground for termination or suspension outside the VCLT is needed.

Ultimately, the endurance of treaty obligations in wartime demonstrates that the international legal order rests on a sustained commitment to stability, predictability and the rule of law. The reaffirmation of *pacta sunt servanda* even amid conflict underscores that the durability of treaty law is not an accident of peace but a foundation of international legal order.

Annotation. This article reassesses the effect of armed conflict on treaties and seeks to offer a more nuanced approach that prevents misreadings and aligns the applicable rule with the general principle forged through customary law. It argues that contemporary customary international law supports a general presumption of continuity of treaty relations, subject to invokable exceptions. Although the International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties endorse a negative rule against *ipso facto* termination or suspension, their formulation blurs the distinction between continuity as the default legal relationship and the separate question of whether a State may invoke an armed conflict to affect treaty operability. The study demonstrates that, apart from the general continuity principle, the Draft Articles constitute progressive development rather than codification. Building on reflections regarding the nature of the effects of armed conflict on treaties, the article proposes a recalibrated reading of Article 3 that couples the non-automatic rule with an explicit susceptibility standard implemented through a structured, two-step analysis prioritising party intent and treaty subject-matter, guided by the indicative annex and conditioned by procedural safeguards. The analysis ultimately underscores the need for a more precise and operational articulation of the doctrine to ensure that treaty relations remain both resilient and legally coherent during armed conflict.

Ամփոփագիր. Սույն հոդվածում վերագնահատվում է զինված հակամարտության ազդեցությունը պայմանագրերի վրա և առաջարկվում է առավել նրբերանգային մոտեցում, որը թույլ է տալիս կանխել սխալ մեկնաբանությունները և կիրառելի կանոնը համապատասխանեցնել սովորութային իրավունքի շրջանակում ձևավորված ընդհանուր սկզբունքին: Հոդվածում հիմնավորվում է, որ ժամանակակից սովորութային միջազգային իրավունքը հաստատում է պայմանագրային հարաբերությունների շարունակականության ընդհանուր կանխավարկած՝ ենթակա կիրառելի բացառությունների վկայակոչման: Թեև Միջազգային իրավունքի հանձնաժողովի՝ Զինված հակամարտությունների ազդեցությունը պայմանագրերի վրա նախագծային հոդվածներն ամրագրում են բացասական կանոն, ըստ որի՝ զինված հակամարտությունը ipso facto չի հանգեցնում պայմանագրի դադարեցման կամ կասեցման, դրանց ձևակերպումը որոշակիորեն աղոտացնում է տարբերությունը շարունակականության՝ որպես ելակետային իրավական հարաբերության, և այն առանձին հարցի միջև, թե արդյոք պետությունը կարող է վկայակոչել զինված հակամարտությունը

պայմանագրի գործունակության վրա ազդելու նպատակով: Ուսումնասիրությունը ցույց է տալիս, որ, ընդհանուր շարունակականության սկզբունքից բացի, նախագծային հոդվածները ներկայացնում են ոչ թե կոդիֆիկացիա, այլ միջազգային իրավունքի պրոգրեսիվ զարգացում: Հիմնվելով զինված հակամարտության՝ պայմանագրերի վրա ունեցած ազդեցության բնույթի վերաբերյալ դիտարկումների վրա՝ հոդվածը առաջարկում է 3-րդ հոդվածի վերաիմաստավորված ընթերցում, որը ոչ ավտոմատ դադարեցման կամ կասեցման կանոնը համադրում է պայմանագրի՝ զինված հակամարտության ազդեցությանը ենթակա լինելու հստակ չափանիշի հետ՝ կիրառվող կառուցակարգված երկփուլ վերլուծության միջոցով: Այդ վերլուծությունն առաջնահերթություն է տալիս կողմերի մտադրությանը և պայմանագրի առարկային, առաջնորդվում է ինդիկատիվ հավելվածով և պայմանավորվում է ընթացակարգային երաշխիքներով: Վերջնական հաշվով հոդվածն ընդգծում է դոկտրինի առավել ճշգրիտ և գործնականորեն կիրառելի ձևակերպման անհրաժեշտությունը, որպեսզի պայմանագրային հարաբերությունները զինված հակամարտության պայմաններում մնան ինչպես դիմակայուն, այնպես էլ իրավականորեն հետևողական:

Аннотация. В настоящей статье переосмысливается вопрос о влиянии вооружённого конфликта на договоры и предлагается более нюансированный подход, позволяющий избежать ошибочных толкований и согласовать применимое правило с общим принципом, сформировавшимся в обычном международном праве. В статье утверждается, что современное обычное международное право закрепляет общую презумпцию продолжения договорных отношений, допускающую применение исключений, на которые государство должно специально ссылаться. Хотя Проекты статей Комиссии международного права о последствиях вооружённых конфликтов для договоров устанавливают негативное правило, исключающее *ipso facto* прекращение или приостановление действия договора, их формулировка размывает различие между продолжением действия договора как исходным правовым состоянием и отдельным вопросом о том, может ли государство ссылаться на вооружённый конфликт для изменения применимости договора. В исследовании показывается, что, за исключением общего принципа продолжения действия договоров, Проекты статей представляют собой скорее прогрессивное развитие, чем кодификацию международного права. Опираясь на анализ природы последствий вооружённого конфликта для договоров, статья предлагает переосмысленное прочтение статьи 3, которое соединяет правило об отсутствии автоматического прекращения или приостановления с прямо выраженным критерием того, в какой мере договор затрагивается вооружённым конфликтом, применяемым посредством структурированного двухэтапного анализа. Такой анализ отдаёт приоритет намерению сторон и предмету договора, ориентируется на индикативное приложение и ограничивается процессуальными гарантиями. По результатам проведенного исследования, статья подчёркивает необходимость более точной и практически применимой формулировки доктрины, с тем чтобы договорные отношения оставались устойчивыми и юридически последовательными в условиях вооружённого конфликта.

***Keywords**: Armed conflict, treaty continuity, suspension, termination, International Law Commission.*

***Բանալի բառեր** - զինված հակամարտություն, պայմանագրերի շարունակականություն, կասեցում, դադարեցում, Միջազգային իրավունքի հանձնաժողով:*

***Ключевые слова:** вооружённый конфликт, продолжение действия договоров, приостановление, прекращение, Комиссия международного права.*

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Arshakyan M. - PhD Student, Department of Public International and European Law, Institute of Law, Russian-Armenian University, e-mail: arshakyan.mikayel@gmail.com.

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