

**IMPOSED TREATIES
AND
INTERNATIONAL LAW**

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Foreword by
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FOREWORD

For centuries, the received wisdom of international law was that a treaty imposed by a victorious state upon a vanquished state was not vitiated by the fact that the consent of the defeated state was secured through duress. The rule had its value in maintaining the stability of territorial and other dispositions made in the wake of war. It was fully consistent with the principles that international law did not preclude states from resorting to war and that the concern of international law was with the *ius in bello* rather than the *ius ad bellum*.

These comfortable assumptions were brought to an end by the League of Nations Covenant and more especially by the United Nations Charter, which placed restraints on what had heretofore been regarded as the right or privilege of states to resort to war. Article 2, paragraph 4, of the Charter required that Members (and states generally) "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . ." This basic principle of the Charter was given application to treaties in Article 52 of the Vienna Convention on the Law of Treaties:

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

The remarkable reception of the Vienna Convention on the Law of Treaties into customary international law has undoubtedly given a firm place to Article 52 in general international law.

But neither Article 2, paragraph 4, of the Charter, nor Article 52 of the Vienna Convention has solved the problem of imposed treaties. There is as yet no means whereby an authoritative determination may be made of when there has been a threat or use of force in violation of the Charter. The Security Council and General Assembly, as political organs of the United Nations, are not qualified to perform the task, and the International Court of Justice, which is the principal judicial organ of the United Nations and would be in a position to make such determinations, is not called upon to do so. But even if one of the principal organs of the United Nations were to approach the question of whether a treaty had been imposed, the difficulty of determining the facts and the absence of clearly defined and generally accepted legal norms would stand in the way of effective adjudication. The

definition of aggression adopted by the General Assembly has inherent ambiguities, papers over differences, and is, in the view of many important states, applicable only to the peace-keeping activities of the Security Council under the Charter. It is in an event a definition of aggression and not of the legality of the threat or use of force in international relations.

The area of doubt and controversy about imposed treaties has thus not been eliminated but merely transformed by new norms of international law. The question of what is an "imposed treaty" remains and must be subjected to continuing analysis by international lawyers. To that analysis this study by Professor Malawer is a most valuable contribution—throwing light, as it does, on the history of the doctrine of "imposed treaties," the dimensions of the problem, and possible solutions to it. It is difficult to disagree with his conclusion that "Political decisions are needed to clarify the legal status of the rule and to develop it further."

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