

# Suspension and expulsion of states from international organisations

## Analysis of the Vienna Convention on the Law of Treaties and of the practice at the United Nations and the Council of Europe

### SUMMARY

Sovereign states, as the primary subjects of public international law, voluntarily enter into treaties (international agreements) creating international organisations, as the secondary subjects of public international law. According to a long-standing and well-established principle of public international law, known by the Latin maxim of *pacta sunt servanda*, states are obliged to abide by the agreements to which they commit. This principle is enshrined in Article 26 of the Vienna Convention on the Law of Treaties ('Vienna Convention'). It also applies, as a matter of course, to the multilateral treaties establishing international organisations. Such treaties may specify duties incumbent upon state parties, such as periodic payment of membership fees or agreement to abide by the decisions of organs of the organisation, as well as a set of values or principles to which state parties to the founding treaties have voluntarily committed, as in Article 3 of the Statute of the Council of Europe.

If a state violates a provision of a multilateral treaty that is essential to the accomplishment of its object or purpose, under Article 60 of the Vienna Convention, such breach is considered material. In such case, the other parties may, by unanimous agreement, suspend the operation of the treaty in whole or in part, or terminate it either in the relations between themselves and the defaulting state, or between all the parties to the treaty. Some experts claim that Article 60 of the Vienna Convention could be invoked to terminate a treaty establishing an international organisation, and thereby serve as a means for suspension or expulsion of a recalcitrant member.



#### IN THIS BRIEFING

- Introduction
- Analysis of the Vienna Convention on the Law of Treaties
- Practice of the United Nations and Council of Europe
- Conclusions



## Introduction

**International organisations** 'are usually created between states, on the basis of a treaty, possess at least one organ, and have a will that is distinct from that of its member states'.<sup>1</sup> As such, international organisations are **subjects of international law**, i.e. they have rights and duties stemming from that law.<sup>2</sup> They can also themselves be members of other international organisations.<sup>3</sup> Depending on the criteria applied, the number of international organisations existing today is estimated at between 250 and 350.<sup>4</sup> State membership in international organisations, and the rights and duties linked to it, has, as a matter of principle, a **legal basis in international treaties**, and as such are subject to the **law of treaties**, codified in 1969 in the [Vienna Convention on the Law of Treaties](#) ('VCLT'). In certain cases, therefore, breach of a treaty creating an international organisation can lead either to '**suspension** of the rights of membership, which can mean the complete or partial suspension of rights and privileges in organs in which a member is represented', on one hand and in other cases, to '**expulsion** which means that a member ceases to be a part of an international organization'.<sup>5</sup> Expulsion of a state from an international organisation is, in fact, 'the most extreme way in which an international organization might handle an errant Member State'.<sup>6</sup> However, cases of such expulsions are extremely rare.<sup>7</sup> This is partly because of an approach under which keeping a state within the organisation is considered advantageous because the state can continue to be monitored; in contrast, if a state is allowed to breach the organisation's rules, this can negatively impact the organisation's prestige.<sup>8</sup> In practice, a similar result to legal expulsion can be achieved 'by forcing a state to withdraw from an international organisation or by treating that state in such a manner that it has no other alternative but to withdraw'.<sup>9</sup>

## Analysis of the Vienna Convention on the Law of Treaties

The principle of *pacta sunt servanda*, enshrined in Article 26 VCLT, means that states are obliged to abide by the international obligations they have assumed. However, a state-party to a treaty cannot demand other parties' performance if it defaults on its own obligations.<sup>10</sup> This principle is recognised in International Court of Justice (ICJ) case law and enshrined in the VCLT. The ICJ considers that 'the general principle of law that a **right of termination on account of breach** must be presumed to exist in respect of all treaties' except for those of a humanitarian character.<sup>11</sup> The consequences of breach of a multilateral treaty are laid down in Article 60 VCLT, which is considered to be a codification of existing customary international law.<sup>12</sup> Under paragraph 3(b) it defines a 'material breach' of a multilateral treaty as a 'violation of a provision **essential** to the accomplishment of the object or purpose of the treaty', and in paragraph 2 it sets out the remedies available to the other parties, including notably the suspension of the operation of the treaty, in whole or in part, either with regard to the defaulting state, or between all the parties. Article 60(3)(b) provides that a party that is specially affected by the breach may invoke the breach as grounds for suspending the treaty in its relations with the defaulting state. Finally, Article 60(3)(c) provides that any party other than the defaulting state may 'invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty'. 'Ancillary' as well as 'central' provisions of treaties can be considered 'essential'.<sup>13</sup>

In the context of imposing sanctions on member states of international organisations, Article 60(3)(b) is crucial, and the notion of a 'provision essential to the *accomplishment of the object or purpose* of the treaty'. To invoke the norm of Article 60 therefore, it is necessary to demonstrate that the state in question breached not simply any rule of the treaty, but a rule essential to the accomplishment of the object or purpose of the treaty. In the context of a treaty instituting an international organisation, it may seem that the notion of an 'object or purpose' of the treaty can be identified with the object or purpose of the organisation in question. However, it must be kept in mind that 'if the non-observance is justified either under a specific treaty clause or pursuant to

Article 60, being a reaction to a prior material breach of the treaty by another party, or under any of the accepted circumstances precluding wrongfulness of State conduct, or under the UN Charter, it does not qualify as a material breach'.<sup>14</sup> Article 60 VCLT speaks of a 'material' and not a 'fundamental or major' breach, arguing that a 'provision viewed by a party as essential to the effective execution of the treaty is material, **if it induced that party to enter into the treaty** at all, even though the provision may be of an ancillary character'.<sup>15</sup> Article 60 has the character of a **default rule** (*ius dispositivum*), as follows explicitly from Article 60(4). Therefore, if the treaty instituting a given international organisation provides its own rules on sanctions on member states, such rules **enjoy precedence over the general norms** of Article 60(1)-(3) which 'remain residual and constitute *leges generales*'.<sup>16</sup> However, what is important in the context of Article 60, is that **member states of the organisation may activate the mechanism provided therein, and not the organisation itself acting through its organs**. Article 60 does not affect the rules of customary international law concerning state liability for damages caused by the breach of its obligations under a treaty.<sup>17</sup> Furthermore, Article 60 is subject to the overarching principle of proportionality, and therefore 'only the suspension of the operation of a treaty is permitted where termination would be an overreaction'.<sup>18</sup>

Given that Article 60 VCLT covers multilateral treaties without explicitly removing international organisations from its purview, it seems that the rules on termination of a multilateral treaty, contained in the VCLT, also include international organisations. Thus, terminating such a treaty with regard to a recalcitrant state that is in material breach of the treaty instituting the international organisation would amount to expulsion of that state from the organisation in question. The applicability of Article 60 VCLT to international organisations is confirmed by Giegerich and Fenwick.<sup>19</sup> However, Amerasinghe claims that the implied right to expulse a recalcitrant member can be claimed for closed organisations, but not necessarily for open ones. He does not, however, explain why Article 60 VCLT should not apply to both types of organisations.<sup>20</sup>

**Closed international organisations** are defined as those where membership is based on fulfilling a certain set of criteria, which may be geographical, political and economic. To be a member of such an organisation, a state must fulfil those criteria, failing which, according to Schermers, 'it could ... lose its membership, even without express provision for expulsion, as soon as the organization declares this incompatibility'.<sup>21</sup> Dzehtsiarou and Coffey add that, in the case of such organisations e.g., the Council of Europe, 'it is important that members share common values and actively engage in achieving its aims'. Therefore an 'attempt by a member State to undermine the values of an organization which has a relatively limited number of members has arguably a greater impact than would such action in a global organization'.<sup>22</sup> The situation is different in the case of **open international organisations** based on the principle of **universality**. Here, according to Amerasinghe, 'it may be argued that the aim of universality should preclude a presumption permitting expulsion', although, he admits, 'even in such organizations the existence of conditions for admission to membership should warrant the expulsion of members who fail to continue to satisfy those conditions, even in the absence of express provision for expulsion'.<sup>23</sup>

The possible applicability of the Article 60 mechanism to the **European Union** is likewise controversial.<sup>24</sup> Giegerich argues that the Article 60 regime is inapplicable, because the EU Treaties have established a 'self-contained regime' whereby Member States may not rely on treaty breaches to suspend their own performance of duties, and that there is no possibility of expulsion or suspension outside the regime of Article 7 TEU.<sup>25</sup> Ruffert claims that the relation between Article 7 TEU and Article 60 VCLT should be understood in such a way that the Article 7 procedure should be deployed first and only if it does not lead to satisfactory results should the sanctions under general public international law be triggered.<sup>26</sup> Pechstein draws attention to the fact that the scope of application of Article 7 TEU is limited to the violation of the values codified in Article 2 TEU, whereas a serious breach of the Treaties can also be concerned with other rules, not only Article 2 TEU.<sup>27</sup> Furthermore, the scope of sanctioning of Article 7 TEU is also more narrow than that of Article 60 VCLT, as it only encompasses suspension and not expulsion.<sup>28</sup> Therefore, according to Pechstein,

whereas suspension of an EU Member State is governed (at least for violation of Article 2 TEU) by the procedure envisaged in Article 7 TEU, the **expulsion** of a Member State could be governed by general international law, i.e. Article 60 VCLT.<sup>29</sup>

## Practice at the United Nations and the Council of Europe

### United Nations

#### League of Nations (1919-1945) as predecessor to the United Nations

The [Covenant of the League of Nations](#) (CLN) provided for an express rule allowing for the expulsion of its members (Article 16(4)), in cases when a member 'violated any covenant of the League'. The procedure provided for expulsion following a unanimous vote of the Council, without the participation of the recalcitrant state. Therefore, unlike the VCLT, the CLN did not limit expulsion from the League to a 'material' breach, but allowed for sanctions for the violation of 'any' rule. Likewise, malicious intent or any other form of fault on the part of the recalcitrant state was not required.<sup>30</sup> Experts understand that 'the main purpose of this provision was to prevent a covenant-breaking member of the League from blocking any action by the League which required a unanimous vote of the Council or Assembly'.<sup>31</sup> The Secretary-General of the League adopted the interpretation that Article 16(4) CLN also applied to non-fulfilment of financial obligations towards the organisation.<sup>32</sup> Considering the application of Article 16(4) in practice, a proposal to expel Liberia for tolerating slavery was not adopted by the Council.<sup>33</sup> There was no formal attempt to expel Germany, Italy or Japan, as those three countries withdrew from the League on their own initiative (Germany and Japan in 1933, Italy in 1937).<sup>34</sup> The only country to be expelled from the League was the Union of Soviet Socialist Republics (USSR), following its invasion of Finland on 30 November 1939.<sup>35</sup> The resolution removing the USSR from the League was considered unanimously adopted, although China, Finland, Greece and Yugoslavia abstained.<sup>36</sup> Although the General Assembly and Council of the League decisions were framed as if they were declaratory acts, the doctrine of international law affirms that they were constitutive,<sup>37</sup> i.e. that they were necessary to legally sever the Soviet Union's ties with the League. Following the USSR's expulsion from the League of Nations, it was also deemed to have lost membership of the International Labour Organization (ILO), because it did not duly notify its desire to remain part of the ILO following its expulsion from the League, returning only in 1954.<sup>38</sup> This is because, under the [original ILO constitution of 1919](#), ILO membership was tied to membership of the League.

#### Suspension of rights and privileges of membership (Article 5 UN Charter)

[Article 5](#) of the UN Charter (UNC) stipulates that 'a Member of the United Nations against which preventive or enforcement action has been taken by the Security Council [SC] may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the [SC]'. Nonetheless, 'the exercise of these rights and privileges may be restored by the [SC]'. Hans Kelsen, writing shortly after the adoption of the UNC, believed that 'suspension of the exercise of the rights of membership could be an appropriate sanction against any violation of obligations by a Member'.<sup>39</sup> In practice, '[n]o member of the UN [has] been suspended from the rights and privileges of membership under Article 5'.<sup>40</sup> However, UN General Assembly [Resolution 65/265 of 1 March 2011](#) suspended Libya's rights of membership in the Human Rights Council.<sup>41</sup> The UN Conference on Trade and Development (UNCTAD – a permanent subsidiary organ of the UN) also suspended the Republic of South Africa (RSA). The UN Office of Legal Affairs questioned the legality of this move, however, arguing that suspension is a competence of the GA, and not of subsidiary organs.<sup>42</sup> The RSA has also 'sometimes been expelled from plenary meetings of the Universal Postal Union (seemingly without this affecting membership as such)'.<sup>43</sup>

## Expulsion from the organisation (Article 6 UN Charter)

[Article 6 UNC](#) provides that 'A Member of the United Nations which has **persistently violated the Principles** contained in the present Charter may be expelled from the Organisation by the [GA] upon the recommendation of the [SC]'. Article 18 UNC requires a two-thirds majority. The role of the SC is crucial in the process, it enjoys not only *de facto* but also *de jure* discretionary power, and its permanent members are practically immune from sanctions, as they enjoy the right of veto over a decision on expulsion.<sup>44</sup> Academics point out the highly political nature of the expulsion procedure under the UNC, noting that 'exclusion from the UN has almost always been on **political grounds** through the veto of permanent member of the [SC]'. They add that UN members 'have been remarkably lax in excluding or expelling states on the grounds cited under Articles 3(1) and 6', but at the same time 'the usual way of condemnation of warlike activities has been the non-seating of governmental representatives,<sup>45</sup> i.e. not admitting them physically to meetings. After World War 2 and the emergence of two major political blocs 'there was no longer agreement over what constituted social behaviour internationally ... and because the UN members rate universal membership so highly, there was a great reluctance to condemn other states, let alone expel them from the UN for asocial activities'.<sup>46</sup>

## Suspension of voting rights (Article 19 UN Charter)

[Article 19 UNC](#) allows suspension of a UN member's voting rights, should it fail to fulfil its financial contribution to the organisation: 'A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member'. This sanction, provided for in Article 19, 'amounts only to a **suspension of rights** of the member state, **not to a suspension of obligations or a suspension of membership** status'.<sup>47</sup> The wording of the provision would suggest an automatic (*ipso jure*) mode of application ('shall have no vote'), but in practice 'there does not seem to be such automatic application', and the Assembly reports 'decision making by consensus'.<sup>48</sup> This provision has been used against Haiti (1963) and the Dominican Republic (1964).<sup>49</sup>

## Denying credentials as a form of sanction

Although the verification of credentials of national delegates to the GA 'is meant to be a routine matter', the procedure 'has been used as a way of denying some states the right to participate',<sup>50</sup> i.e. as a form of **sanction** not envisaged in the text of the UN Charter. Thus, in 1974, the GA rejected the credentials of the RSA delegation due to its racist policies (apartheid). As a result, the delegation could neither speak nor vote in the GA.<sup>51</sup> Its credentials were accepted only in 1994, following the country's democratic transition.<sup>52</sup> There was also an attempt to deny credentials to Israel in 1982.<sup>53</sup> Although technically, Republic of China (RoC)/People's Republic of China (PRC) membership was not solved through the expulsion of the former and acceptance of the latter (because the UN considered that the state of China had always been a member), the RoC delegation was denied recognition of its credentials in 1971. Conversely, the PRC delegation was granted recognition on the basis of a GA resolution.<sup>54</sup>

## Council of Europe

### Article 3 of the Statute – Values of the Council of Europe

Article 3 of the [Statute of the Council of Europe](#) ('SCE'), adopted in 1949, lays down the values upon which the CoE is based. It states that all members 'must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the' CoE. Furthermore, the

third paragraph in the SCE preamble fleshes out the values of the organisation, which include, democracy and political liberty as well as the rule of law and fundamental rights. The legal norms expressed in Article 3 and the third paragraph of the preamble (the sanctioned norms) are legally protected by **sanctioning norms**. These are provided for in: (1) the [Rules of Procedure](#) of the Parliamentary Assembly of the Council of Europe ('PACE RoP') (revocation of credentials); and (2) Article 8 SCE (suspension of membership, request for withdrawal, termination of membership).

## Revocation of PACE delegation credentials on substantive grounds

Participation in the Parliamentary Assembly of the Council of Europe ('PACE' or 'Assembly') entails the acceptance of the CoE values, as enshrined in Article 3 SCE. Under [Rule 6.1](#) PACE RoP, the representatives and substitutes' credentials, elected within the national or federal parliament or appointed from among the members of the national or federal parliament, must be sent to the President of the Assembly by the president of the national parliament or parliamentary chamber at least one week before the opening of the PACE session. Rule 6.3 provides that credentials must be subject to ratification by the Assembly. Each individual representative who is to participate in the work of PACE, must individually sign a statement, required by Rule 6.2.b, that he or she 'will subscribe to the aims and basic principles of the Council of Europe'. As Antonino Ali points out, the procedure of ratification of credentials 'in large international organisations such as the CoE should serve as a proof that the individuals indicated by their respective States are what the organisation requires to be'.<sup>55</sup> What is more, 'in international organisations the approval of credentials is considered a formality'.<sup>56</sup> However, at CoE this is not the case, and the PACE RoP provide not only for credentials to be challenged at the beginning of a session on procedural grounds (which belongs to the sphere of **formalities**), but also during a session and on substantive grounds (which goes beyond mere formalities and enters into the sphere of **sanctions**). Prior to ratification, PACE credentials can be challenged on **procedural grounds**, as provided for in Rule 7 (e.g. if the written statement envisaged in Rule 6.2.b is missing) and on **substantive grounds**, as provided for in Rule 8. Credentials are challenged on substantive grounds **for an entire national delegation** (Rule 8.1), on the initiative of at least 30 PACE members present in the Chamber, belonging to at least five national delegations, or on the basis of a report of the [Committee](#) on the Honouring of Obligations and Commitments by Member States. Rule 8.2 provides for two possible grounds for challenging credentials on substantive grounds: (1) **serious violation of the basic principles** of the CoE mentioned in Article 3 and the Preamble to the Statute, and (2) **persistent failure to honour obligations and commitments** and lack of cooperation in the Assembly's monitoring procedure.

As indicated in paragraph 12 of [Resolution 1115 \(1997\)](#), PACE 'may penalise persistent failure to honour obligations and commitments accepted and lack of cooperation in its monitoring process, by adopting a **resolution and/or a recommendation**, by the **non-ratification of the credentials** of a national parliamentary delegation at the beginning of its next ordinary session or by the **annulment of ratified credentials** in the course of the same ordinary session ... . Should the member state continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take the appropriate action in accordance with Articles 7 and 8 [SCE]'. In September 2018, the Committee on Rules of Procedure, Immunities and Institutional Affairs tabled a proposal ([Doc. 14621](#)) to reform the RoP by merging the two rules concerning the review of credentials on substantive grounds. It specifically proposed to clarify that suspension of voting rights would 'not impinge on the rights of Assembly members to take part in the election of' European Court of Human Rights judges, the Commissioner for Human Rights, the CoE Secretary General and the Deputy Secretary General and the PACE Secretary General. Professor Antonio Ali considers these provisions in the PACE RoP as 'unlawful, because the procedure of presenting credentials was created for a completely different purpose. A power has been attributed to the PACE that has no legal basis in the founding treaty (the CoE Statute)'.<sup>57</sup> Ali goes on to describe the situation as located 'between the **lack of competence** of the organ to adopt such measures and an outright **'misuse of powers'**, namely, the use of the annulment or non-ratification of the credentials **for reasons other than those for which they could be annulled or**

**non-ratified**'.<sup>58</sup> Andrew Drzemczewski, retired head of the PACE Legal Affairs and Human Rights Department, considers that Ali's interpretation 'must be forcefully rejected, simply because the Assembly rules on the questioning of credentials are based on a long-standing and unopposed (except recently by Russia) practice, accepted by all Member States and the Committee of Ministers'.<sup>59</sup> Delegations' credentials have been challenged on the substance in over 40 instances, but before 2000, the challenges were successful in only two cases.<sup>60</sup>

## Suspension of certain rights of representatives in the PACE

Apart from a wholesale refusal to ratify credentials or the revocation of ratification, which effectively excludes a delegation from participating in the Assembly, the Assembly has also resorted to a less far-reaching measure in practice, namely the **suspension of certain rights** of members of a given delegation. The RoP do not explicitly provide for this sanction, yet its existence can be derived through legal interpretation, in line with the canon of legal reasoning known as *argumentum a majori ad minus* (literally, 'argument from the greater to the smaller' – meaning effectively that 'who enjoys the competence to do more, may equally well do less').<sup>61</sup> This sanction was first applied in **April 2000** with regard to suspension of the Russian delegation's voting rights 'on the grounds that Russia had breached the CoE basic principles on human rights in connection with the conflict in Chechnya'.<sup>62</sup> However, on 25 January 2001, the Assembly adopted Resolution 1241(2001), whereby it ratified the Russian delegation's credentials, thereby restoring their rights.<sup>63</sup> In [Resolution 1990 \(2014\)](#) of 10 April 2014, the Assembly – acting on the basis of Rule 9.1 PACE RoP – 'in order to **mark its condemnation and disapproval** of the Russian Federation's actions with regard to Ukraine', resolved to '**suspend** ...until the end of the 2014 session' **selected rights** of the representatives belonging to the Russian delegation. These rights were: (1) voting rights, (2) the right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee, and (3) the right to participate in election observation missions. Importantly, Resolution 1990(2014) was not concerned with suspending RF membership in the CoE, but with a 'reconsideration on substantive grounds of the previously ratified **credentials** of the Russian delegation', in response to two motions brought by members of the Assembly (motions [13457](#) and [13459](#)). It is important to note that the first of these motions requested the Assembly to reconsider the Russian delegation's credentials altogether (i.e. to exclude it from PACE for a year), whereas the second 'requested a 'milder' suspension of the rights of the delegation'.<sup>64</sup> At the opening of the 2015 PACE ordinary session, the Russian delegation's still unratified credentials were challenged on substantive grounds pursuant to Rule 8 RoP. On 28 January 2015, PACE adopted [Resolution 2034 \(2015\)](#), in which it **ratified** the RF delegation's credentials. However, at the same time, 'as a clear expression of its condemnation of the continuing grave violations of international law in respect of Ukraine by the Russian Federation', PACE resolved to **suspend** the members of the Russian delegation's rights to: (1) be appointed rapporteur; (2) be a member of an ad hoc committee on observation of elections; (3) to represent the Assembly in CoE bodies as well as external institutions (for 2015); as well as (4) voting rights; and (5) the right to be represented in the PACE Bureau, the Presidential Committee and the Standing Committee of the Russian delegation to PACE. PACE promised to withdraw the last two sanctions in April 2015, should Russia comply with its resolutions, and simultaneously threatened to annul the credentials in their entirety, at its June 2015 session, 'if no progress is made with regard to the implementation of the Minsk Protocol and Memorandum as well as the demands and recommendations of the Assembly as expressed in this resolution, in particular with regard to the immediate withdrawal of Russian military troops from eastern Ukraine' (paragraph 16). Importantly, as Andrew Drzemczewski [explains](#), the Assembly 'did not take the drastic decision to divest the delegation from continuing to participate in its work'. In other words, the Russian delegation's credentials remained valid, the representatives from Russia were allowed to participate in PACE activities with the exclusion of the areas mentioned in Resolution 1990 (2014) (until the end of 2014) and in Resolution 2034 (2015). However, the **scope of suspension** affected what could be described as the **essence of the mandate of a representative, namely voting rights**, effectively transforming the Russian delegation from participants to observers.

## Non-participation due to non-submission of credentials

The possible rejection of credentials (as a sanction imposed by PACE) and the suspension of certain rights of a delegation whose credentials are otherwise accepted need to be strictly differentiated from a situation where a given CoE state delegation does not participate in its work due to the **lack of submission of credentials**. In fact, submission of credentials is the duty of the state (in principle, the speaker of the national parliament) and the lack of such submission means that PACE cannot ratify the credentials – with the result that the delegation in question does not participate in the Assembly's work **for the entire year in question**. This form of non-participation is not, in legal terms, a sanction, because it is not imposed by PACE, but occurs on the initiative of the state in question. Given its effects and the political context in which it takes place, it could be described as a form of **'self-suspension' of membership rights** by the state member. As Drzemczewski [indicates](#), between 1965 and 1986 the **Cyprus** delegation was also absent from PACE. He also noted that the parliament of **Bosnia and Herzegovina** did not submit its delegation's credentials in 2019, meaning that state did not participate in PACE work at the time. The same author [underlined](#) that there was no Russian delegation at PACE between January 2016 and 25 June 2019, noting that 'unlike what was often erroneously indicated in the media, no "sanctions" had been imposed by the Assembly with respect to Russian parliamentarians; the absence of the Russian delegation in PACE was the result of the **Russian Parliament's decision not to participate in the Assembly's work**. In other words, the Russian Parliament, of its own volition, had decided not to send a delegation to the Assembly despite express invitations for it to do so prior to the Assembly sessions for the years 2016, 2017, 2018 and 2019'. Indeed, as Ali notes: 'From 2015 the Russian delegation, as a measure to oppose the suspension of the rights, *decided not to participate* in the activities of PACE and ceased to cooperate with the monitoring procedure of the Assembly'.<sup>65</sup> A Russian Federation decision on 30 June 2017 suspended the country's contribution to the CoE budget until the rights of its delegation were restored.<sup>66</sup> This standoff between PACE and Russia lasted for two years, until 2019. In May 2019, 'over 30' out of 47 foreign ministers of CoE states adopted a declaration ([Ref. DC 086\(2019\)](#)) stating that 'all member states should be entitled to **participate on an equal basis** in the [CoM] and in [PACE], the two statutory organs of the Council of Europe', recalling that paying contributions to the CoE ordinary budget is 'one of the fundamental obligations' of CoE members, and adding that they 'would welcome that delegations of **all member states be able to take part** in the next June part-session [of the PACE] considering the importance of the elections of the Secretary General and of judges to the European Court of Human Rights'. While this declaration of 'over 30' ministers was not, in legal terms, a [declaration](#) of the Committee of Ministers ('CoM'), it did pave the way for a compromise and the return of Russia's delegation to the Assembly. Indeed, Russia subsequently paid all outstanding contributions to the CoE and sent its delegation to the Assembly, whose credentials were [accepted](#) in June 2019.

## Suspension, request for withdrawal, and expulsion

Whereas the PACE RoP are limited in the scope of their subject matter to the participation of the relevant national delegation, Article 8 of the CoE Statute envisages suspension and expulsion of members who do not comply with the **values of the Council of Europe**. Three sanctions are possible: (1) suspension by the CoM; (2) request for voluntary withdrawal, formulated by the CoM; (3) expulsion by decision of the CoM. Sanctions are triggered if a member of the organisation 'has **seriously violated** Article 3', i.e. the Council of Europe **values** of rule of law and fundamental rights, as well as the duty to **collaborate sincerely and effectively** on the realisation of the organisation's aim. This, in turn, is fleshed out in Article 1(a) of the Statute as striving 'to achieve a greater unity between its members for the purpose of **safeguarding and realising the ideals and principles** which are their common heritage and facilitating their economic and social progress'. As Konstantinos Magliveras points out, the procedure envisaged in Article 8 'does not involve at all the allegedly recalcitrant member, which will only be notified of the decision'. As a result, the 'member is not offered the opportunity to state its position and respond to the allegation'. Furthermore 'the



suspended member does not have a right to appeal against the decision and seek its judicial review'.<sup>67</sup> Experts underline that the CoE relies on a specific set of values which it seeks to promote, for which expulsion can, in some cases, be an appropriate solution to the situation of a recalcitrant state – because otherwise the very '**credibility** of the whole organization' would be undermined, effectively 'making it unable to fulfil its statutory functions'.<sup>68</sup> In other words, if such a country were allowed to join and remain in the CoE, this would undermine its essence as an organisation promoting precisely specified values that can be jointly described as a commitment to **liberal democracy**.<sup>69</sup> Expulsion may in fact increase the legitimacy of the international organisation by 'showing that it takes compliance seriously'.<sup>70</sup>

Concerning procedural issues, Article 8 SCE provides that the CoM may suspend a recalcitrant member state and request that it withdraw under Article 7 SCE. This latter provides that a withdrawal must be formally notified to the Secretary General (SG), and takes effect only at the end of the financial year in which it is notified, if the notification is tendered during the first nine months of that financial year. If notification is tendered in the last three months of the financial year, it takes effect only at the end of the next financial year. According to Article 8 sentence 2: 'If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine'. This wording suggests that the CoM may expel a CoE member only if that member does not comply with the request to leave the CoE.

Following the military coup in **Greece** in 1967, the Council of Europe contemplated its suspension. However, the junta notified its withdrawal and denunciation of the European Convention of Human Rights (ECHR) before expulsion materialised.<sup>71</sup> **Article 8 was effectively triggered** for the first time only in 2022.<sup>72</sup> On 25 February 2022, the CoM, sitting in the formation of ministers' deputies, issued a [decision](#) in which they 'agreed to **suspend the Russian Federation** [hereinafter: RF] from its rights of representation in the [CoE] in accordance with Article 8 of the Statute', deciding that this suspension 'takes **immediate effect** in respect of the rights of representation of the [RF] in the [CoE] and in [the PACE]'. The CoM justified the decision due to '**serious violation** by the [RF] of its obligations under Article 3 of the Statute', referring back to their [decision](#) of the previous day concerning the situation in Ukraine, in which they had 'condemned in the strongest terms the armed attack on Ukraine by the [RF] **in violation of international law**'. On 2 March 2022, the CoM adopted [Resolution CM/Res\(2022\)1](#) on **legal and financial consequences of the suspension** of the RF from its rights of representation in the CoE. Subsequently, on 10 March 2022, the CoM adopted a [decision](#) 'to consult [PACE] on potential further use of Article 8 of the Statute' vis-à-vis RF. On 15 March, PACE adopted [Opinion 300\(2022\)](#), in which it considered RF to be in '**serious breach of Article 3 of the Statute**' (paragraph 4), and concluded 'the [CoM] should request the [RF] to **immediately withdraw** from the [CoE]' (paragraph 20). In the event that Russia 'does not comply with the request, the Assembly suggest[ed] that the [CoM] determine the immediate possible date from which the Russian Federation would cease to be a member of the [CoE]' (ibid.). In response, the Russian government declared it had [decided to leave](#) the CoE on its own initiative,<sup>73</sup> and [notified](#) the CoE Secretary General the same day 'of its **withdrawal** from the [CoE] in accordance with the Statute of the Council of Europe and of its **intention to denounce** the [ECHR]. Following that, the CoE adopted [Resolution CM/Res\(2022\)2](#) 'on the cessation of the membership of the [RF] to the [CoE]' on 16 March 2022. The period (until the end of the financial year, i.e. until 31 December 2022) stipulated in Article 7 SCE was therefore not observed, and the CoM's resolution determining the cessation of Russia's membership of the CoE was adopted, despite Russia's had compliance with the request to notify its intent to withdraw. In this context, Professor Magliveras points out that the wording of Article 8 SCE 'does not clarify whether the [CoE] may proceed with compulsory withdrawal when the suspended member has already notified its withdrawal'.<sup>74</sup> However, it is the uniform understanding of all institutions of the Council of Europe, including the European Court of Human Rights ([resolution of 20 March 2022](#)) that Russia **ceased to be a member of the CoE** on 16 March 2022, and subsequently also [ceased to be a party to the ECHR](#) on 16 September 2022.

## Suspension of observers and associate members

Besides CoE members, associate members and observers are also involved in its work. At present, there are four active observer states (Canada, Japan, Mexico, the United States), and a non-state observer (the Holy See). Furthermore, Israel has observer status within PACE. **Belarus** applied for membership in 1993, with its Parliament enjoying 'special guest' status. However, this was revoked in 1997, with the examination of Belarus's membership application also 'effectively frozen' at the same time.<sup>75</sup> As of March 2022, Belarus was contracting party to 12 CoE treaties, a member of four partial agreements and participated in 13 CoE intergovernmental committees.<sup>76</sup> However, on 17 March 2022, the Committee of Ministers, citing the '**active participation** of Belarus in the aggression of the [RF] against Ukraine', [adopted a decision suspending Belarus](#) from participating 'as observer or in any other capacity' in meetings and activities of the CoM and other CoE bodies; suspending its right of representation in the Group of States against Corruption (GRECO), with some exceptions; as well as its rights as an **associate member** of the Venice Commission.

## Conclusions

The basic premise of international law is the principle of *pacta sunt servanda*, meaning that states that have undertaken treaty obligations, should abide by them. Since membership in international organisations is, as a rule, based on a multilateral treaty, the principle applies also to such organisations. The Vienna Convention on the Law of Treaties provides for rules applicable in the case of breach of multilateral treaties, which can also be applied to international organisations. However, the examples analysed in this briefing – the United Nations and the Council of Europe – have shown that the suspension or expulsion of states from those international organisations takes place on the basis of the organisation's own rules, such as its basic treaty (UN Charter, State of the Council of Europe), as well as its internal rules, such as the Rules of Procedure of the Parliamentary Assembly of the Council of Europe. The practice of expelling states from international organisations is not particularly rich, and such cases can be described as isolated. After all, membership of international organisations is voluntary, and states that do not share the core values of an organisation are often willing to leave on their own initiative. In contrast, the practice of suspending states is richer, and often takes the form of suspending the rights of the recalcitrant state's delegation (in the UN General Assembly or PACE). To this end, international organisations sometimes resort to technical legal devices, such as the verification of credentials. In the case of the Council of Europe, this latter procedure is explicitly envisaged as a form of penalty for state members that do not respect the core values of the organisation. However, there are also situations in which a state avoids being penalised by simply refusing to submit its credentials and effectively suspending itself on its own initiative.

## FURTHER READING

Klabbers, J. *Advanced Introduction to the Law of International Organizations*, Edward Elgar, 2015.

Mathias, S. and Trengove, S. 'Membership and Representation' in *The Oxford Handbook of International Organizations*, Oxford University Press, 2016.

## ENDNOTES

<sup>1</sup> J. Klabbers, *Advanced Introduction to the Law of International Organizations*, Edward Elgar, 2015, p. 7. See also p. 8-9 for exceptions, e.g. for organisations not created on the basis of a formal treaty, but rather on the basis of a political agreement (Organization for Security and Co-operation in Europe (OSCE)), UN resolutions (e.g. UNICEF and UNIDO), or national parliament resolutions (Nordic Council).

<sup>2</sup> R. Kolb, *Théorie du droit international*, Bruxelles, Bruylant, 2022, p. 208.

<sup>3</sup> J. Klabbers, *Advanced Introduction...*, op.cit., p. 8.

<sup>4</sup> J. Klabbers, *Advanced Introduction...*, op.cit., p. 7.

- <sup>5</sup> S. Mathias, S. Trengove, 'Membership and Representation' in *The Oxford Handbook of International Organizations*, Oxford University Press, 2016, p. 979.
- <sup>6</sup> A. Harrington *International Organizations and the Law*, Taylor & Francis, 2018, p. 56.
- <sup>7</sup> K. Dzehtsiarou, D.K. Coffey, '[Suspension and expulsion of members of the Council of Europe: difficult decisions in troubled times](#)', *International and Comparative Law Quarterly* Vol. 68(2), 2019, p. 446.
- <sup>8</sup> A. Harrington, op.cit., p. 56., cf. J. Makarczyk, 'Legal Basis for Suspension and Expulsion of a State from an International Organization', *German Yearbook of International Law* vol. 25, 1982, p. 477.
- <sup>9</sup> L.B. Sohn, 'Expulsion or Forced Withdrawal from an International Organization', *Harvard Law Review*, vol. 77, 1964, p. 1381.
- <sup>10</sup> T. Giegerich, in *Vienna Convention on the Law of Treaties: A Commentary*, Springer, 2012, p. 1022.
- <sup>11</sup> '[Legal Consequences for States of the Continued Presence of South Africa in Namibia \(South West Africa\) Notwithstanding Security Council Resolution 276 \(1970\)](#)' (Advisory Opinion) [1971] ICJ Rep 16, paras 96, 98).
- <sup>12</sup> M.N. Shaw, *International Law*, 8th ed., Cambridge UP, 2018, p. 718. However, an opposite view is expressed by M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff, 2009, p. 750.
- <sup>13</sup> T. Giegerich, op.cit., p. 1031.
- <sup>14</sup> T. Giegerich, op.cit., p. 1032.
- <sup>15</sup> M.E. Villiger, op.cit., p. 743.
- <sup>16</sup> Ibid. p. 746.
- <sup>17</sup> T. Giegerich, op.cit., p. 1023.
- <sup>18</sup> Ibid., p. 1037.
- <sup>19</sup> C.G. Fenwick, *International Law*, Appleton-Century-Crofts, 1962, p. 474; T. Giegerich, op.cit., p. 1037.
- <sup>20</sup> C.F. Amerasinghe, *Principles of the institutional law of international organizations*, 2nd ed., CUP, 2005, p. 122-127.
- <sup>21</sup> H.G. Schermers, *International Institutional Law*, Kluwer, 1980, p. 81-82.
- <sup>22</sup> K. Dzehtsiarou and D.K. Coffey, op.cit., p. 446.
- <sup>23</sup> C.F. Amerasinghe, op.cit., p. 122.
- <sup>24</sup> M. Ruffert, in Calliess/Ruffert, *EUV/AEU*, 5, Auflage, CH. Beck, 2016, Art. 7 EUV, Rn 30; Streinz/Pechstein, 3. Aufl. 2018, *EUV*, Art. 7 Rn. 23.
- <sup>25</sup> T. Giegerich, op.cit., p. 1042.
- <sup>26</sup> M. Ruffert 2016, op.cit., Art. 7 EUV, Rn. 31.
- <sup>27</sup> M. Pechstein, in Streinz, *EUV/AEU*, 3. Aufl. 2018, Art. 7 EUV, Rn. 23.
- <sup>28</sup> Ibid.
- <sup>29</sup> Ibid.
- <sup>30</sup> L.B. Sohn, op.cit., p. 1394.
- <sup>31</sup> Ibid., p. 1383.
- <sup>32</sup> Ibid., p. 1384.
- <sup>33</sup> Ibid., p. 1384-1386.
- <sup>34</sup> L.B. Sohn, op.cit., p. 1386
- <sup>35</sup> Ibid., p. 1387.
- <sup>36</sup> Ibid., p. 1389.
- <sup>37</sup> Ibid., p. 1395.
- <sup>38</sup> Ibid., p. 1390-1391.
- <sup>39</sup> H. Kelsen, '[Sanctions in International Law under the Charter of the United Nations](#)', *Iowa LR*, 31, 1945/1946, p. 505-506.
- <sup>40</sup> S. Mathias, S. Trengove, op.cit., p. 980.
- <sup>41</sup> Ibid.
- <sup>42</sup> J. Klabbers, *An Introduction to International Institutional Law*, op.cit., p. 109, n. 86.
- <sup>43</sup> Ibid.
- <sup>44</sup> J. Makarczyk, op.cit., p. 483-484.
- <sup>45</sup> C. Archer *International Organisations*, 3rd ed., Routledge, 2001, p. 98-99.
- <sup>46</sup> Ibid., p. 101.
- <sup>47</sup> J. Klabbers, *An Introduction to International Institutional Law*, op.cit., p. 110
- <sup>48</sup> Ibid.
- <sup>49</sup> Ibid.
- <sup>50</sup> Chestermann et al., *Law and Practice*, 2016, p. 225.
- <sup>51</sup> Ibid., p. 228.
- <sup>52</sup> Ibid., p. 231.
- <sup>53</sup> M. Halberstam, 'Excluding Israel from the General Assembly by a Rejection of its Credentials' *American Journal of International Law*, vol. 78, 1984, p. 179.
- <sup>54</sup> [GA Res. 2758](#) (25 October 1971), see Chestermann et al., p. 226.

- <sup>55</sup> A. Ali, 'The Parliamentary Assembly of the Council of Europe and the Sanctions against the Russian Federation in Response to the Crisis in Ukraine', *Italian Yearbook of International Law*, vol. 27, 2017, p. 79.
- <sup>56</sup> Ibid.
- <sup>57</sup> Ibid, p. 89.
- <sup>58</sup> Ibid.
- <sup>59</sup> A. Drzemczewski, [The \(Non-\) Participation of Russian Parliamentarians in the Parliamentary Assembly of the Council of Europe : An Overview of Recent Developments](#), *Europe of Rights & Liberties*, 2020.
- <sup>60</sup> Ibid.
- <sup>61</sup> See, e.g., U. Klug, *Juristische Logik*, 4th ed., Berlin, Springer, 1982, pp. 146-151.
- <sup>62</sup> Council of Europe, [document no. 8949](#) (2001), para. 2. See also A. Ali, op. cit., p. 82.
- <sup>63</sup> A. Ali, op.cit., p. 82.
- <sup>64</sup> Ibid., p. 82.
- <sup>65</sup> Ibid., p. 84.
- <sup>66</sup> Ibid.
- <sup>67</sup> K. Magliveras, [The Question of Expelling Recalcitrant Member States: The Termination of the Russian Federation's Membership in the Council of Europe](#), *Völkerrechtsblog*, 3 May 2022.
- <sup>68</sup> K. Dzehtsiarou and D.K. Coffey, op.cit., p. 444.
- <sup>69</sup> cf. B. Çalı, E. Demir-Gürsel, The Council of Europe's Responses to the Decay of the Rule of Law and Human Rights Protections: A Comparative Appraisal, *European Convention on Human Rights Law Review*, Vol. 2(2), 2021, p. 166-167.
- <sup>70</sup> K. Dzehtsiarou and D.K. Coffey, op. cit., p. 447.
- <sup>71</sup> J. Klabbers, An Introduction to International Institutional Law, op.cit., p. 109; K. Magliveras, Exclusion from Participation in International Organisations, *Kluwer Law International* 2011, pp. 80-81
- <sup>72</sup> K. Magliveras, [The Question...](#), op. cit.; E. Demir-Gürsel, [The Council of Europe's Sharp Turn: Russia's Expulsion and its Possible Implications for Other Member States](#), *Verfassungsblog* (25 March 2022).
- <sup>73</sup> K. Magliveras, [The Question...](#), op.cit.
- <sup>74</sup> Ibid. The author claims that 'it is questionable if all Article 8 requirements were met' and proposes to amend the CSE for the future to clarify the expulsion procedure.
- <sup>75</sup> Council of Europe, [Possible steps to be taken with regard to Belarus' participation in Council of Europe activities](#), information document SG/Inf(2022)10, 16 March 2022, p. 2.
- <sup>76</sup> Ibid., p. 3.

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