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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 / Benny Tan Zhi Peng

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Abstract:	The International Law Commission recently completed its work on the controversial issue of the effects of armed conflicts on treaties, culminating in the adoption of a set of eighteen draft articles and an annex. The Commission's efforts are nothing short of commendable, but this article argues that insufficient attention has been paid to the role of supervening impossibility of performance and fundamental change of circumstances in determining the effects of armed conflicts on treaties. Although both doctrines may in fact appropriately apply in the context of armed conflicts, the mere referencing of them in the adopted draft articles gives rise to several problems. In particular, the two doctrines were codified by the 1969 Vienna Convention on the Law of Treaties without their application to armed conflicts in mind. Some changes to the draft articles are proposed to address these difficulties.
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