

Summary

ABBREVIATIONS AND ACRONYMS USED

INTRODUCTION

PART I

GENERAL THEORY OF TREATIES

Chapter 1

CONCEPT OF INTERNATIONAL TREATY

- 1.1 Historical background
- 1.2 Codification of the law of treaties
- 1.3 The Vienna Convention on the Law of Treaties
- 1.4 Concept of treaty
 - 1.4.1 International agreement
 - 1.4.2 Concluded in written form
 - 1.4.3 Concluded between States or international organizations
 - 1.4.4 Governed by international law
 - 1.4.5 Whether embodied in a single instrument or in two or more related instruments
 - 1.4.6 Absence of a particular designation
- 1.5 Treaty terminology
- 1.6 The issue of Memoranda of Understanding (MOUs)
- 1.7 Soft law instruments

Chapter 2

CLASSIFICATION OF TREATIES

- 2.1 Formal classifications
 - 2.1.1 Considerations regarding the number of parties
 - 2.1.2 Considerations regarding the type of procedure for their conclusion
 - 2.1.3 Considerations concerning the possibility to access to a treaty
- 2.2 Material classifications
 - 2.2.1 Considerations concerning the legal nature
 - 2.2.2 Considerations concerning implementation over time
 - 2.2.3 Consideration concerning territorial implementation
 - 2.2.4 Considerations concerning the implementation mechanism
- 2.3 Plan of the following parts of this work

PART II

GENESIS OF INTERNATIONAL TREATIES

Chapter 1

PROCEDURE OF FORMATION AND CONCLUSION OF TREATIES

- 1.1 Introduction

- 1.2 International and internal stages
- 1.3 Conditions of validity
 - 1.3.1 Capacity of negotiating States
 - 1.3.2 Signatories authorization and full powers
 - 1.3.3 Mutual consent
 - 1.3.4 Lawfulness and material possibility of object or purpose
- 1.4 Preparation of the conventional text
 - 1.4.1 Negotiations
 - 1.4.1.1 Distinction regarding the type of treaty
 - 1.4.1.2 Procedure followed in international organizations or *ad hoc* international conferences
 - 1.4.1.3 General rule of good faith negotiations
 - 1.4.2 Adoption of the text
 - 1.4.2.1 Rules for the adoption of the text
 - 1.4.2.2 Differentiations
 - 1.4.2.3 Full powers for adoption
 - 1.4.3 Authentication
- 1.5 Expression of consent
 - 1.5.1 Signature
 - 1.5.1.1 Concept
 - 1.5.1.2 Legal nature
 - 1.5.1.3 Full powers upon signature
 - 1.5.1.4 Signature with ratification effect
 - 1.5.1.5 Deferred signature
 - 1.5.1.6 Obligations arising from signature
 - 1.5.2 Ratification
 - 1.5.2.1 Concept
 - 1.5.2.2 Legal nature
 - 1.5.2.3 Silent treaties
 - 1.5.2.4 Procedure
 - 1.5.2.5 Characteristics
 - 1.5.2.5.1 Governmental act of international nature
 - 1.5.2.5.2 Express act
 - 1.5.2.5.3 Political and circumstantial act
 - 1.5.2.5.4 Discretionary act
 - 1.5.2.5.5 Act of non-retroactive nature
 - 1.5.2.5.6 Irrevocable act
 - 1.5.2.5.7 No time limits
 - 1.5.2.5.8 Possibility or impossibility of carrying out a conditional ratification
 - 1.5.3 Accession
- 1.6 Structure of treaties

Chapter 2

RESERVATIONS TO MULTILATERAL TREATIES

- 2.1 Introduction

- 2.2 Reservations to bilateral treaties?
- 2.3 Concept and formulation of reservations
- 2.4 Moment of formulation of reservations
- 2.5 Limitations on reservations
- 2.6 Procedure regarding reservations
- 2.7 Distinction between reservations and other acts not implying a reservation
- 2.8 Acceptance of and objection to reservations
- 2.9 Effects of reservations
- 2.10 Withdrawal of reservations or objections
- 2.11 Interpretation of reservations
- 2.12 The problem of reservations (and amendments) at the internal level
- 2.13 Addendum: consideration of the matter of reservations and interpretative declarations in case of succession of States

Chapter 3

ENTRY INTO FORCE OF TREATIES

- 3.1 Entry into force and provisional application of treaties
 - 3.1.1 Entry into force of treaties
 - 3.1.2 Provisional application of treaties
- 3.2 Registration and publication of treaties
- 3.3 Observance and application of treaties
 - 3.3.1 Observance (or compliance) of treaties
 - 3.3.2 Application of treaties
 - 3.3.2.1 Temporal scope of application
 - 3.3.2.2 Territorial scope of application
- 3.4 Effectiveness of treaties and international responsibility

PART III

CONTINUANCE IN FORCE AND TERMINATION OF TREATIES

Chapter 1

TREATIES IN FORCE

- 1.1 Effects of treaties on the parties
 - 1.1.1 External effects
 - 1.1.2 Internal effects
- 1.2 Effects of treaties on third parties
 - 1.2.1 Diffuse effect of recognizing an objective legal situation
 - 1.2.2 Factual impact of a given treaty on third States
 - 1.2.3 Legal effect of imposing obligations and granting rights to third States
 - 1.2.3.1 Treaties providing for obligations for third States
 - 1.2.3.2 Treaties providing for rights for third States
- 1.3 Effects of treaties that have not yet entered into force on contracting parties and third parties
- 1.4 Amendment and modification of treaties
 - 1.4.1 Amendment of treaties
 - 1.4.2 Modification of multilateral treaties
 - 1.4.3 Internal law procedure

- 1.5 Interpretation of treaties
 - 1.5.1 General interpretation rule
 - 1.5.2 Supplementary means of interpretation
 - 1.5.3 Interpretation of treaties authenticated in two or more languages
 - 1.5.4 Interpretation systems
 - 1.5.4.1 International interpretation
 - 1.5.4.2 Internal interpretation
 - 1.5.4.3 Interpretation by legal scholars
 - 1.5.5 Interpretation of treaties on human rights
- 1.6 Conflict between successive treaties
 - 1.6.1 Prevalence of the UN Charter and norms of *jus cogens*
 - 1.6.2 The problem of compatibility clauses
 - 1.6.3 Successive treaties relating to the same subject-matter with identical parties
 - 1.6.4 Successive treaties relating to the same subject-matter with different parties
 - 1.6.5 Conclusion on the Convention system
- 1.7 Concurrence of treaties with a later customary rule

Chapter 2

DEFECTS IN CONSENT AND IN INTERNATIONAL ACTS

- 2.1 Defects in consent and invalidity of treaties
 - 2.1.1 Avoidability of consent
 - 2.1.1.1 Error
 - 2.1.1.2 Fraud
 - 2.1.1.3 Corruption of a representative of a State
 - 2.1.2 Invalidity of consent
 - 2.1.3 Invalidity of treaties
- 2.2 *Jus cogens* and invalidity of treaties
 - 2.2.1 What are norms of *jus cogens*?
 - 2.2.2 Conflict between treaties and norms of *jus cogens*
 - 2.2.2.1 Conflict between a treaty and an earlier norm of *jus cogens*
 - 2.2.2.2 Conflict between a treaty and a subsequent norm of *jus cogens*
 - 2.2.2.3 Conflict between a treaty and a norm of *jus cogens* existing before entry into force of the Vienna Convention
 - 2.2.3 Hierarchy of norms of *jus cogens* in the law of treaties
- 2.3 Unconstitutionality of treaties
 - 2.3.1 Constitutional approach
 - 2.3.2 International approach
 - 2.3.3 Conciliatory approach
 - 2.3.4 Solution adopted by the 1969 Vienna Convention
 - 2.3.5 Intrinsic unconstitutionality of treaties

Chapter 3

TERMINATION AND SUSPENSION OF TREATIES

- 3.1 Termination of treaties

- 3.1.1 Termination by consent of the parties
 - 3.1.1.1 Predetermined abrogation
 - 3.1.1.1.1 Expiration of the agreed term
 - 3.1.1.1.2 Condition subsequent
 - 3.1.1.1.3 Full performance of treaty object and purpose
 - 3.1.1.2 Supervening abrogation
 - 3.1.1.2.1 Termination by the vote of a given number of parties
 - 3.1.1.2.2 (Implicit or tacit) Termination by a later treaty
- 3.1.2 Termination by unilateral will (denunciation)
 - 3.1.2.1 Denunciation in the 1969 Vienna Convention
 - 3.1.2.2 The problem of denunciation in Brazilian Law
- 3.1.3 Extrinsic grounds for termination
 - 3.1.3.1 Material breach of a treaty
 - 3.1.3.2 Supervening impossibility of performance
 - 3.1.3.3 Fundamental change of circumstances
 - 3.1.3.4 Severance of diplomatic or consular relations
 - 3.1.3.5 State of war
 - 3.1.3.6 Disuse (obsolete)
- 3.2 Suspension of the operation of treaties
 - 3.2.1 Suspension by the agreement of the parties
 - 3.2.2 Suspension by unilateral will
 - 3.2.3 Extrinsic grounds for suspension
 - 3.2.4 Suspension of treaties and the Brazilian Law

Chapter 4

PROCEDURE TO BE FOLLOWED WITH RESPECT TO DEFECTS, INVALIDITY, TERMINATION OR SUSPENSION

- 4.1 Procedure relating to defects in consent, invalidity, termination, withdrawal or suspension of the operation of a treaty
 - 4.1.1 Procedure under the 1969 Vienna Convention
 - 4.1.2 Particularities of the 1986 Vienna Convention
- 4.2 Consequences of vitiated consent, invalidity, termination and suspension of the operation of a treaty
 - 4.2.1 Consequences of invalidity of a treaty and vitiated consent
 - 4.2.2 Consequences of the termination of a treaty
 - 4.2.3 Consequences of the suspension of the operation of a treaty

PART IV

TREATIES IN THE 1986 VIENNA CONVENTION

Chapter 1

GENERAL RULES OF THE 1986 CONVENTION

- 1.1 Introduction
- 1.2 History and current situation of the 1986 Convention
- 1.3 Similarities between the 1969 and 1986 Conventions

- 1.4 Relationship between the 1986 Convention and the 1969 Convention
- 1.5 Situation of the Vienna Convention of 1986 in Brazil

Chapter 2

TREATIES UNDER THE CONVENTION OF 1986

- 2.1 Capacity of international organizations to conclude treaties
- 2.2 Some treaties included in the 1986 Convention
 - 2.2.1 Headquarters agreements
 - 2.2.2 Agreements on privileges and immunities
 - 2.2.3 Agreements for the creation of bodies related to the organization in States
 - 2.2.4 Agreements to organize meetings and promote cooperation between international organizations
 - 2.2.5 Agreements to give conferences of international organizations in States
- 2.3 Questions not prejudged by the 1986 Convention

PART V

TREATIES AND INTERNAL LAW

Chapter 1

CONSTITUTIONAL PROCEDURAL ASPECTS ON THE CONCLUSION OF TREATIES IN BRAZIL

- 1.1 Introduction
- 1.2 The 1988 Brazilian Constitution and the treaty-making power
- 1.3 The issue of treaties concluded in simplified form
- 1.4 The relationship between the Executive Power and Legislative Power in the treaty-making process
- 1.5 The role of the National Congress in the treaty-making process
 - 1.5.1 The expression “decide definitively” used in the Constitution
 - 1.5.2 The question of “charges or commitments encumbering the national patrimony”
- 1.6 Internal procedure in the Houses of the National Congress
- 1.7 Brazilian practice for the entry into force of treaties
 - 1.7.1 Final agreement and deposit
 - 1.7.2 Promulgation
 - 1.7.3 Publication
- 1.8 Effects of the internal adoption of treaties in the national legal system
- 1.9 Public authorities responsible for the execution of treaties

Chapter 2

CONFLICT BETWEEN TREATIES AND RULES OF INTERNAL LAW

- 2.1 The case of Brazil
- 2.2 Regulatory parity of ordinary treaties declared by the SFC
- 2.3 Our opinion as to the position of the SFC
- 2.4 Jurisdictional control of the conventionality of laws
 - 2.4.1 The doctrine of conventionality control in the Inter-American system
 - 2.4.2 Conventionality control in Brazilian Law
 - 2.4.2.1 Concentrated control of conventionality

2.4.2.2 Diffuse control of conventionality

2.4.3 Control of supralegality

2.5 Some sensitive issues on the application of treaties in Brazil

REFERENCES

ANNEXES

Annex I

Havana Convention on Treaties (1928)

Annex II

Vienna Convention on the Law of Treaties (1969)

Annex III

Vienna Convention on the Law of Treaties between States and International Organizations or
between International Organizations (1986)

Annex IV

Official Status of the 1969 Vienna Convention on the Law of Treaties

Annex V

Guide to Practice on Reservations to Treaties (2011)

LIST OF OTHER PUBLISHED WORKS OF THE AUTHOR