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Argentina, SOURCES OF STATE PRACTICE IN INTERNATIONAL LAW.

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Argentina

Teresa M. Miguel-Stearns

Issues of Treaty Succession

La República de Argentina is the successor State of Spain in the Southeastern portion of the former Spanish empire in the Americas. At the time of independence, first declared in the Viceroyalty of Buenos Aires in 1810, the territory included present-day Argentina, Uruguay, Paraguay, and Bolivia. The region became known as the United Provinces of the Rio de la Plata. The territory was administered by the government in Buenos Aires. The Congress of Tucumán issued a formal Declaration of Independence in 1816. Shortly thereafter, Uruguay, Paraguay, and Bolivia established independent nations and the remaining territory formed Argentina.

When the nations of the Americas declared independence from Spain and Portugal in the early 19th century, they adhered to the concept of *uti possidetis* first articulated by Spain and Portugal in the Treaty of Madrid in order to maintain the status quo regarding national territorial limits. *Uti possidetis* in

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2 Derived from the Latin, argentum, meaning silver; in Spanish, plata.


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7 Treaty of Madrid, Spain-Portugal, Jan. 13, 1750, 38 C.T.S. 357.

8 Suzanne Lalonde, *Determining Boundaries in a Conflicted World: The Role of *Uti Possidetis* de Jure* (2002). The concept of *uti possidetis*, also found in Roman law, was utilized in the Americas to require countries to maintain their territorial status quo at a certain point in time. In addition to importing *uti possidetis*, Spain and Portugal also agreed to use the best known landmarks, such as rivers and mountains, to demarcate states, provinces, and vicinities. The Treaty of Madrid was amended in 1776. In 1777, the Treaty of San Blas granted the Amazon basin to Portugal and the Rio de la Plata territory (including present-day Uruguay) to Spain.

Spain's view was based on rightful possession not actual occupation of land. In maintaining the colonial status quo at the time of independence, South American countries defined their national territory using colonial administrative divisions in effect in 1810. Treaties and international agreements that followed excluded further European colonization and prevented expansion, conquest, and occupation of the newly established republics.

The Argentine Constitution is one of the oldest in the Americas. It has undergone several reforms over the years, most significantly and recently in 1994 when the Constitution was reorganized and renumbered. At that time, several *Disposiciones Transitorias* were made concerning Argentine territory. The first declares that Argentina is the proper owner of the Islas Malvinas (Falkland Islands (u.K.)), the South Georgian and South Sandwich Islands (u.K.), and the corresponding maritime territories. Argentina has claimed the Islas Malvinas since the early days of independence as a matter of state succession.

The Islas Malvinas/Falkland Islands have long been a point of contention in British–Argentina relations. Argentina traces Spanish claims to the islands going back to the papal bull of 1493 dividing all new world territories between Spain and Portugal according to certain lines of latitude and longitude, The
Argentine believes that Spain possessed a valid legal claim to the Islas Malvinas in the early 19th century. Argentina contends that the second Treaty of Utrecht (1713) between Great Britain and Spain assured no further interference from the British on Spanish territories in the Americas. The Saint Lawrence Convention (1763) further prohibited both Spain and Great Britain from claiming new territories off the coast of South America. Prior to the Saint Lawrence Convention, in 1766, the British established a small colony of about 400 people in West Falkland at Port Egmont. In 1767, the French ceded Port Louis on the eastern island (established by the French in 1764) to the Spanish who renamed it Puerto Soledad. The Spanish forced the British to leave in 1770 and both sides agreed in a formal, written declaration that Spain was the legal possessor of the islands. Spain then allowed the British to reestablish the colony in 1771, which lasted until 1775 when the British departed for economic reasons, leaving behind a plaque declaring the land to be British.

Argentina has and continues to have boundary disputes with its neighbors, especially Chile, but such disputes arise more from previously-unclear demarcations rather than from issues of treaty succession. Incomplete and imperfect cartographic maps at the time of independence, changing rivers and other landmarks, and international conflict has all given rise to confusing territorial limits.

Treaty Ratification and Implementation

The Argentine Constitution provides authority and establishes the role of the Federal Government, specifically both the Executive Power and the Congress, in the treaty-making process. The Constitution obligates the federal

The Spanish then peacefully and uninterrupted occupied and governed the Islas Malvinas from 1774 until Argentine independence in 1810. When Spanish subjects abandoned the islands in 1811 for economic reasons due to Spain's diminishing wealth and power in the Americas, they left behind a plaque claiming the territory. Shortly after declaring independence from Spain, the government of Buenos Aires sent an official to the vacant islands and established a community in the former Spanish town of Puerto Soledad. The Argentines enforced sovereignty three times against fishing vessels during which time Argentine title to the islands was never challenged even though its actions were contested. In response to Argentina asserting its sovereignty over the islands, the U.S.-backed British invaded the islands in 1833 and displaced the Argentine governor and its citizens. In 1844, the Falkland Islands officially became a crown colony. The British have remained on the islands despite repeated claims by the Argentine government that Argentina is the rightful owner of the islands.

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government to establish treaties of peace and of commerce with foreign pow­ers according to the principles of public law established in the Argentine Constitution. The President has the general power to conclude and sign treaties, concordats, and other negotiable instruments in order to maintain good relations with international organizations and foreign countries, as well as the power to receive foreign ministers and admit foreign consuls. Argentine legal scholars agree that 'conclude' means negotiate and sign treaties.

After signing a bilateral or multilateral treaty, the President submits the treaty to Congress, to both the Senate and the Chamber of Deputies, for approval. Prior to the 1994 Constitutional amendments, there was no Constitutional provision or existing law setting forth how Congress was to approve the treaty. Therefore, each chamber passed a law by normal, ordinary means approving the treaty or rejecting it. Provisions created by the 1994 Amendments now distinguish between two types of treaties: human rights treaties and other treaties. Congress has the power to approve or reject treaties with other nations or international organizations, and concordats with the Holy See, and all treaties and concordats enjoy a status higher than laws but below the Constitution in Argentine legal hierarchy. A human rights treaty may be further elevated in the hierarchy after a separate vote whereby by a two-thirds majority of each chamber of Congress approves giving the treaty the highest status possible, that is, equal to the Argentine Constitution.

Withdrawal from or denouncement of one of these treaties requires the approval of the President after a two-thirds vote in each chamber of Congress denouncing the treaty.

Treaties of integration that confer power and jurisdiction to supranational organizations (such as MERCOSUR) under conditions of reciprocity and equality and that respect democracy and human rights are superior to ordinary federal laws (second only to the Constitution and certain human rights treaties). Approval of treaties with other Latin American States must be made by an absolute majority of all members of each chamber of Congress. For all other treaties, Congress, with the approval of an absolute majority of those members present in each chamber, declares its intent to approve a treaty; but the treaty will only pass if an absolute majority of the total representatives of each chamber approves the treaty within 120 days of the initial declara­tion. The withdrawal of treaties previously ratified under this section also requires the absolute majority of the total members of each chamber of Congress.

There is a difference of opinion among scholars as to whether Congress can modify the treaty. Modification has occurred in the past but not since the late 19th century when Congress modified a boundary treaty with Bolivia; it was thereafter renegotiated, signed, approved again by Congress, promulgated, published, and ratified some 10 years after initial negotiations began. One influential scholar, Jorge R.A. Vanossi, contends that if Congress attempts to modify a bilateral treaty, it must be sent back for renegotiation. If Congress modifies a multilateral treaty, it can be ratified without further negotiations if the President agrees with the modification; the modification then becomes a formal reservation.

Once a treaty is approved by both chambers of Congress, it is published in Diario de Sesiones, the official bulletin of the National Congress, and is sent back to the President for ratification and promulgation. The President promul­gates the new treaty by issuing a decree and publishing the treaty in the Boletín Oficial, Argentina's national gazette. Shortly thereafter, instruments of ratifica­tion are exchanged and/or deposited, and the treaty enters into force.
At different times in the 20th century, Argentina was ruled by a de facto government as a result of coups d'etat. The question arose as to whether treaties entered into by these provisional governments were valid. The Supreme Court in the first half of the 20th century said they were valid as long as Congress approved them once Congress was formed. In the latter half of the 20th century, the Court moved away from the rule of subsequent approval by Congress and held merely that treaties entered into by de facto governments were valid and in force.

The Argentine Constitution grants provinces the power to celebrate convenios internacionales or international conventions (which in final form are indistinguishable from treaties) that are not incompatible with the foreign relations of the Nation, and that do not affect the powers delegated to the federal government nor the public credit (or debt) of the Nation. The National Congress must be made aware of such conventions by the provinces.

Further, provinces are permitted to conclude tratados parciales or partial treaties to aid in the administration of justice, for economic interests, and for the common good. Again, the national Congress must be aware of such partial treaties to aid in the administration of justice, for economic interests, and for the common good. On the other hand, provinces are explicitly prohibited from exercising powers granted to the federal government, including entering into partial treaties of a political nature.

Evidence of State Practice

Argentine international relations fall under the jurisdiction of the Executive Power, specifically the President and his or her cabinet. Policies and practices related to foreign affairs can be found on the website of the Ministerio de Relaciones Exteriores y Culto, and include reference documents such as the Ministry’s general objectives, strategies, and plans, as well as its objectives pertaining to international cooperation and economic relations. There are subsections that explore the history of bilateral relations, specifically pertaining to territorial limits, between Argentina and each of its neighbors: Bolivia, Brazil, Chile, Paraguay, and Uruguay. Naturally, there are documents available on the website in both English and Spanish regarding the question of the Islas Malvinas/Falkland Islands. There is also an open-access Digital Library of Treaties. This searchable database contains not only treaties but also historical national and international documents, and documents exchanged between the minister and other Argentine institutions. The search results provide the title of the document plus the dates of signature and entry into force. It also flags treaties and agreements that are no longer in force. The full-text of each document is available as a pdf which is a scan of the original, official, authenticated document.

The Ministerio de Relaciones Exteriores y Culto has published Memoria, an annual report of the Ministry of Foreign Affairs and Culture, since 1860. The Ministry’s Foreign Office published a Boletín containing reports of consular and diplomatic officers at the end of the 19th century and during first quarter of the 20th century. Both houses of Congress maintain webpages and publish their daily proceedings online and in their respective boletines, including full-text laws passed and treaties approved. The national government also publishes a daily Boletín Oficial wherein all laws, ratified treaties, and other legal documents of interest are published.

instances of foreign invasion or other imminent danger. Provinces may not name or receive foreign diplomats. This provision remains relatively unchanged since first established in 1853.

Provinces may not pass laws related to citizenship and naturalization, bankruptcy, counterfeiting money and documents, weights, arms, and armies except in emergency.
Annotated Bibliography of Sources

General Treaty Collections

1. COLECCIÓN DE TRATADOS CELEBRADOS POR LA REPÚBLICA ARGENTINA CON LAS NACIONES EXTRANJERAS
   (Buenos Aires, Bernheim y Boneo 1863; La Nación 1877), 2 vols.
   Index: The back of each volume contains an index of the treaties reprinted in the volume in chronological order.

2. COLECCIÓN DE TRATADOS CELEBRADOS POR LA REPÚBLICA ARGENTINA CON LAS NACIONES EXTRANJERAS
   Juan A. Alsina and Mariano A. Pelliza and Cuberto Shoolbred
   Summary: This three-volume set supersedes the previous set (above) and includes treaties omitted in the old set. These volumes are available free on the Hathi Trust: Vol. 1 (1811–1860): http://hdl.handle.net/2027/mdp.35112104629813; Vol. 2 (1863–1875): http://hdl.handle.net/2027/njp.32101060433370; Vol. 3 (1876–1884): http://hdl.handle.net/2027/njp.32101060433388.
   Index: The index at the end of each volume is a list of treaties for that volume, organized chronologically by signature date.

3. TRATADOS, CONVENCIONES, PROTOCOLOS, Y DEMÁS ACTOS INTERNACIONALES CELEBRADOS POR LA REPÚBLICA ARGENTINA
   Summary: A collection of full-text bilateral and multilateral treaties organized alphabetically by country and subject (for example: Alemania (Germany) followed by Alianzas (Alliances) followed by Armisticios (Armistices), Austria-Hungary, Belgium, and so on). Further organized chronologically within each country or subject from 1810 to the present. Vol. 10 includes intra-provincial agreements. Vol. 11 includes treaties from the Spanish colonial era (1493–1810).
   Index: There are three indices in the back of each of the first nine volumes allowing the researcher to find documents chronologically, alphabetically by country, or alphabetically by subject matter. Vol. 10 contains an appendix with intra-provincial agreements. Vol. 11 contains an index of all eleven volumes.

4. EDICIÓN PROVISIONAL DE TRATADOS
   Ministerio de Relaciones Exteriores y Culto, Oficina de Derecho Internacional y Legislación Extranjera (Buenos Aires, 1922).
   Summary: This is a provisional edition of bilateral treaties from 1825–1920; some have been verified by the foreign government involved, but not all. The treaties are organized by subject within which they are listed alphabetically by country, then by date within each country.
TRATADOS Y CONVENCIONES VIGENTES EN LA NACIÓN ARGENTINA

Summary: Vol. I contains first a list of Presidents from 1810 (Independence) to the present, followed by another list of Ministers of the Office of Foreign Affairs from 1822, the year it was established, to the present. Vol. I then reprints all bilateral treaties organized alphabetically by country and then chronologically within that country. The bilateral treaties with non-Spanish language countries are bilingual side-by-side. Vol. II reprints all multilateral treaties chronologically from 1863-1921.

Index: The index in back of each volume organizes the treaties alphabetically by subject, followed by a chronological index.

REGISTRO DIPLOMÁTICO DEL GOBIERNO DE BUENOS-AIRES
(Buenos Aires: Imp. del Estado, 1835).

Summary: Treaties are organized chronologically from 1810 (a treaty between Buenos Aires and Paraguay) to 1831 (a treaty amongst the western provinces). Wholly available on Google Books: http://books.google.com/books?id=geovAAAAYAAJ.

Index: Contains a general index of treaties concluded by the national government, and by the government of Buenos Aires with other provinces or with foreign states.

TRATADOS DE LOS ESTADOS DEL RIO DE LA PLATA Y CONSTITUCIONES DE LAS REPÚBLICAS SUD-AMERICANAS: COLECCION FORMADA POR LAS PUBLICACIONES OFICIALES HECHAS EN LOS ESTADOS RESPECTIVOS, CON LOS TEXTOS EN INGLES, FRANCES, ITALIANO Y PORTUGUES, EN FRENTE DEL TEXTO ESPAÑOL, EN LOS TRATADOS CONCLUIDOS CON POTENCIAS ESTRANJERAS
Florenzia Varela (Montevideo, 1847-48).

Summary: Treaties are organized by country (República Argentina, Provincia Oriental, and República Oriental del Uruguay) and chronologically within each country, beginning in 1811. This volume also reprints current constitutions for countries, provinces, and regions. Wholly available on Google Books at: http://books.google.com/books?id=cMUrAQAAMAAJ.

Index: A helpful index of treaties organized alphabetically by foreign country and chronologically.

ESTUDIO DE LOS TRATADOS DE COMERCIO DE LA REPÚBLICA ARGENTINA
Alejandro Guesalaga (Buenos Aires: Lajouane, 1898).

Summary: Contains a discussion of individual treaties signed with various nations, as well as an explanation of most favored nation status and of the need for treaty reform. Wholly available on Google Books at: http://books.google.com/books?id=mxosAAAAYAAJ.

Private International Law

TRATADOS SANCIONADOS POR EL CONGRESO SUD-AMERICANO DE DERECHO INTERNACIONAL PRIVADO INSTALADO EN MONTEVIDEO EL 25 DE AGOSTO DE 1888 Y CLAUSURADO EL 18 DE FEBRERO DE 1889
(París: Imp. J.A. Alsina, 1886).

Summary: A collection of treaties pertaining to private international law (trade, criminal law, intellectual property, procedure, etc.) written and
endorsed by a group of government officials, foreign diplomats, and legal scholars throughout South America.


Summary: A collection of documents that lead up to this first South American conference on private international law as well as the actas or proceedings of the individual sessions during the course of the conference.


Summary: A collection of documents that lead up to this first South American conference on private international law as well as the actas or proceedings of the individual sessions during the course of the conference. This second edition contains two additions: the first is an introductory note authorizing this second edition; the second is the Argentine law No. 3,192 (1894) that approved the treaties concluded by Argentina during the conference signed by the Secretary of the Senate and the Secretary of the House of Deputies (p. 655).

18 EL DERECHO INTERNACIONAL PRIVADO Y EL CONGRESO SUD-AMERICANO DE MONTEVIDEO Lisandro Segovia (Buenos Aires: Imp. Lit. y Enc. Mariano Moreno, 1889).

Summary: This volume contains an extensive analysis by the author of the state of private international law in South America. The Appendix at the end of the volume reproduces all of the treaties approved and concluded at the conference.


Summary: This single volume publishes the proceedings and negotiations of the conference as well as the final model treaties. This update includes the national legislation implemented by each participating country in ratifying the various treaties.


Summary: A collection of documents pertaining to the second South American conference of private international law, some 50 years after the first. Includes reports of countries, comparative analyses of the treaties from the first conference with proposed treaties of the second conference, proceedings of the plenary sessions, and texts of the final treaties agreed upon by the nations present.


Summary: This publication provides an English translation of the treaties concluded at the Second South American Congress on Private International Law. The introduction provides context.


Summary: Argentina participated in all of the CIDIP conferences. Reports, drafts, and final treaties can be found on the website of the Organization of American States. Treaty information includes whether and when a country signed and ratified the various treaties resulting from these conferences.

Summary: This official OAS multilingual publication provides the proce­dural documents that bring to close CIDIP I, including a list of the six treaties that were concluded in Panama, and calls for the convening of CIDIP II. It provides background information with citations to OAS documents as well as a brief summary of the CIDIP I conference proceedings.

24 CONFERENCIA ESPECIALIZADA DE DERECHO INTERNACIONAL PRIVADO: ANALISIS Y SIGNIFICADO DE LAS CONVENCIONES APROBADAS EN PANAMA, 1975
Tatiana B. De Maekelt (Caracas, 1979).
Summary: In addition to a concise history of private international law in the Americas, and the author's analysis of each conference leading up to CIDIP I, the author also provides a bibliography, index of treaties, laws, documents, and jurisprudence, and appendix containing the reproduction of treaties concluded in 1975.

Summary: This publication first reproduces the six treaties concluded in CIDIP I in Panama. In the second section, the authors provide commentary regarding the treaties.

26 ACTAS Y DOCUMENTOS SEGUNDA CONFERENCIA ESPECIALIZADA INTERAMERICANA SOBRE DERECHO INTERNACIONAL PRIVADO (CIDIP II: MONTEVIDEO, REPUBLICA ORIENTAL DEL URUGUAY, 23 DE ABRIL A 8 DE MAYO DE 1979.
Summary: Contains the acts and reports of the plenary sessions, proyectos (draft conventions), and final text of the eight conventions approved by CIDIP-II along with the list of participants to each convention. Vols. II and III contain the acts of the sessions of the Commission, proyectos presented by the commission to various delegations, and the final text of those the Commission approved.

27 ARGENTINA-ESTADOS UNIDOS: ACUERDOS BILATERALES: 1853–2000
Consejo Argentino para las Relaciones Internacionales (CARI) (Buenos Aires: CARI, 2000).
Summary: A collection of 247 treaties, agreements, declarations, and memo­randa between Argentina and the United States organized chronologically. Each treaty has an introductory note with useful information such as classification or subject, summary, signatories, and signature and entry-into-force dates.

Consejo Argentino para las Relaciones Internacionales (CARI) (Buenos Aires: CARI, 2000).
Summary: A collection of 247 treaties, agreements, declarations, and memo­randa between Argentina and Spain organized chronologically. Each treaty has an introductory note with useful information such as classification or subject, summary, signatories, and signature and entry-into-force dates.

29 ARGENTINA-MEXICO: ACUERDOS BILATERALES, 1912–2000
Consejo Argentino para las Relaciones Internacionales (CARI) (Buenos Aires: CARI, 2002).
Summary: Publication of bilateral treaties, agreements, declarations, acts, and memoranda of understanding between Mexico and Argentina. There is a helpful introduction detailing the history of bilateral agreements between the two countries.
Index: There are two indices: the first lists the treaties chronologically by date of signature; the second organizes the agreements topically. The treaties and agree­ments are reprinted in full in chronological order beginning with their first in 1912.

Diplomatic Documents
30 BOLETIN MINISTERIO DE RELACIONES EXTERI EROS (Buenos Aires, 1902–1916).
Summary: This publication's name varies slightly over time. 45 vols. published. Monthly publication includes reports of foreign affairs including treaty negotiations and ratifications.
Australia

Carole L. Hinchcliff

Issues of Treaty Succession

Australia's status as a country responsible for its own international relations, including treaty-making, evolved slowly over time in a series of significant historical developments. When the first British settlers established a penal colony in Sydney, New South Wales in 1788, they brought with them English law. Despite the existence of the indigenous people, the British considered Australia to be "terra nullius" (empty land) because the Aborigines did not hold and use land following European views of property ownership. Unlike British colonies such as Canada, Australia was "settled" rather than conquered, which according to Sir William Blackstone meant that:

[...it] hath been held, that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English Law, as is applicable to their own situation and the condition of an infant colony...]


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