

Sources of State Practice in International Law

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Argentina

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Issues of Treaty Succession

*La República de Argentina*² 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.³

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*⁴ in order to maintain the status quo regarding national territorial limits.⁵ *Uti possidetis* in

Spain's view was based on rightful possession not actual occupation of land.⁶ 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.⁷

The Argentine Constitution⁸ 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.⁹ Argentina has claimed the *Islas Malvinas* since the early days of independence as a matter of state succession.¹⁰

The *Islas Malvinas*/Falkland Islands have long been a point of contention in British – Argentine 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.¹¹ The

¹ The author is grateful to the work of several predecessors whose publications contributed significantly to the research she has done into the historical treaty and diplomatic collections. They include: Denys Peter Myers, *MANUAL OF COLLECTIONS OF TREATIES AND OF COLLECTIONS RELATING TO TREATIES* (Cambridge, Harvard Univ. Press 1922). Wholly available on Google Books at: <http://books.google.com/books?id=HlQUAAAIAAJ>; and Edwin M. Borchard, *GUIDE TO THE LAW AND LEGAL LITERATURE OF ARGENTINA, BRAZIL AND CHILE* (Washington D.C., Library of Congress 1917). Wholly available on Google Books at: <http://books.google.com/books?id=KVYbAQAAMAAJ>.

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

³ See, generally MARCELA TERNAVASIO, *HISTORIA DE LA ARGENTINA, 1806–1852* (2009); VICENTE D. SIERRA, *HISTORIA DE LA ARGENTINA, 1492–1852* (1967).

⁴ Treaty of Madrid, Spain-Portugal, Jan. 13, 1750, 38 C.T.S. 357.

⁵ SUZANNE LALONDE, *DETERMINING BOUNDARIES IN A CONFLICTED WORLD: THE ROLE OF UTI POSSIDETIS* 24–5 (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 imputing *uti possidetis*, Spain and Portugal also agreed to use the best know landmarks, such as rivers and mountains, to demarcate states, provinces, and viceroyalties. The Treaty of Madrid was annulled in 1761. In 1777, the Treaty of San Ildefonso granted the Amazon basin to Portugal and the Rio de la Plata territory (including present-day Uruguay) to Spain.

⁶ Id. at 31–2. In the early 19th century, Spain argued that so much of the Americas was still unexplored such that possession would have been an impossible requirement thus favoring title based on rightful possession (*uti possidetis de jure*). Nonetheless, Portugal and later Brazil favored an interpretation of actual possession (*uti possidetis de facto*).

⁷ Id. at 28–30. The *Monroe Doctrine* also viewed efforts of further European conquest and expansion in the Americas to be acts of aggression. See, *Monroe Doctrine*, 41 *Annals of Cong.* 13–4 (1823) (Gales and Seaton., 1856).

⁸ CONSTITUCIÓN NACIONAL [CONST. NAC.](Arg.) (1853), available in English at <http://www.senado.gov.ar/deInteresEnglish>.

⁹ CONST. NAC. “Disposiciones Transitorias”. RICARDO LEANDRO DE ZAVALÍA, *CONSTITUCIÓN DE LA NACIÓN ARGENTINA* 48 (2004).

¹⁰ RAPHAEL PERL, *THE FALKLAND ISLANDS DISPUTE IN INTERNATIONAL LAW AND POLITICS: A DOCUMENTARY SOURCEBOOK* 24 (1983).

¹¹ The Bull *Inter Caetera* (Alexander VI), May 4, 1493, Francis G. Davenport, *EUROPEAN TREATIES TO 1648* (Vol. I) 56 (1917). See also, LALONDE, *supra* note 5, at 24–5 (emphasis added): “...all lands discovered and to be discovered to the west and south of a line drawn, from the North to the South Pole, 100 leagues west and south of the Azores and Cape Verde Islands, and not in actual possession of any Christian power, should belong exclusively to Spain.” See also, FRANCISCO CENTENO, *TRATADOS, CONVENCIONES, PROTOCOLOS, ACTOS Y ACUERDOS INTERNACIONALES. PUBLICACIÓN OFICIAL* (11 Vols.) 11:11–16 (Buenos Aires, Imp. J.A. Alsina 1911).

Treaty of Tordesillas (1494) confirmed such possession.¹² Argentina attributes discovery of the *Islas Malvinas* to Magellan's expedition of 1520; old Spanish cartographic maps show the *Islas Malvinas* as early as 1522. The British maintain that Captain John Strong made the first landing in 1690 and simultaneously named the islands after Viscount Falkland, Treasurer of the English Navy.¹³

It is disputed by the British 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.¹⁴ The *Saint Lawrence Convention* (1790) further prohibited both Spain and Great Britain from claiming new territories off the coast of South America.¹⁵ 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 1774 when the British departed for economic reasons, leaving behind a plaque declaring the land to be British.¹⁶

¹² Treaty of Tordesillas, Spain-Portugal, June 7, 1494, Supp. I Recueil de Traités 372, 389; Davenport, *supra*, at 84. Portugal and Spain partitioned South America by a meridian defined in the treaty: 370 leagues west of the Cape Verde Islands. VICTOR PRESCOTT AND GILLIAN D. TRIGGS, *INTERNATIONAL FRONTIERS AND BOUNDARIES: LAW, POLITICS AND GEOGRAPHY* 245–7 (2008). *See also*, CENTENO *supra* at 11:17–36.

¹³ PERL, *supra* note 10, at 4.

¹⁴ *Id.* at 22; Treaty of Peace and Friendship between Great Britain and Spain (Second Treaty of Utrecht), Art. VIII., Jul. 13, 1713, 28 C.T.S. 295, 325, 328–9.

¹⁵ *Id.* at 22–3; Convention between Great Britain and Spain (Saint Lawrence Convention), Oct. 28, 1790, 51 C.T.S. 67, 69.

¹⁶ *Id.* at 5. *See also*, Transaction between the Kings of Spain and England regarding certain Hostile Acts on the *Islas Malvinas*, Jan. 22, 1771, CARLOS CALVO, COLECCIÓN COMPLETA DE LOS TRATADOS, CONVENCIONES, CAPITULACIONES, ARMISTICIOS, Y OTROS ACTOS DIPLOMÁTICOS DE TODOS LOS ESTADOS DE LA AMÉRICA LATINA COMPENDIDOS ENTRE EL GOLFO DE MÉJICO Y EL CABO DE HORNOS, DESDE EL AÑO DE 1493 HASTA NUESTROS DÍAS, PRECEDIDOS DE UNA MEMORIA SOBRE EL ESTADO ACTUAL DE LA AMÉRICA, DE CUADROS ESTADÍSTICOS, DE UN DICCIONARIO DIPLOMÁTICO, Y DE UNA NOTICIA HISTÓRICA SOBRE CADA UNO DE LOS TRATADOS MÁS IMPORTANTES (6 Vols.) Vol. II, 391–396 (Madrid, Carlos Bailly-Baillière 1864), available at <http://babel.hathitrust.org/cgi/pt?id=ucm.5319480563;view=1up;seq=401>.

The Spanish then peacefully and uninterruptedly 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.¹⁷ The British have remained on the islands despite repeated claims by the Argentine government that Argentina is the rightful owner of the islands.¹⁸

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 maps at the time of independence, changing rivers and other landmarks, and international conflict has all given rise to confusing territorial limits.¹⁹

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

¹⁷ PERL, *supra* note 10, at 6–8. For the official Argentine position, *see* PERL at 21–27. *See also*, REPÚBLICA ARGENTINA, LA CUESTIÓN MALVINAS: UNA HISTORIA DE COLONIALISMO. UNA CAUSA DE LA NACIONES UNIDAS (Ministerio de Relaciones Exteriores y Culto, 2012), available at <http://www.mrecic.gov.ar/es/la-cuestion-de-las-islas-malvinas> and <http://www.mrecic.gov.ar/es/question-malvinas-islands-o>. For the British position, *see* PERL at 28–30. Perl concludes that given Britain's affirmative actions and duration of occupation, "the case appears strong but not conclusive that British title to the Falklands vested". *Id.* at 35. He also notes that Argentina was in the process of establishing sovereign rights to the exclusion of other nations but due to British invasion and expulsion was "prevented from doing so and thus from practically perfecting her claim". *Id.* at 36.

¹⁸ *Id.* at 24.

¹⁹ Victor Prescott and Gillian D. Triggs, *INTERNATIONAL FRONTIERS AND BOUNDARIES: LAW, POLITICS AND GEOGRAPHY* 245–61 (2008).

government to establish treaties of peace and of commerce with foreign powers according to the principles of public law established in the Argentine Constitution.²⁰ 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.²¹ Argentine legal scholars agree that 'conclude' means negotiate and sign treaties.²²

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.²³ 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.²⁴ Withdrawal from or denouncement of one of these treaties requires the

20 ZAVALÍA, *supra* note 9, at 14, *citing*, Art. 27, CONST. NAC.

21 *Id.* at 38, *citing*, Art. 99, CONST. NAC. This paragraph is significantly different than the pre-1994-reform Article 86 that narrowly specified the types of treaties the President could conclude: peace, commerce, navigation, alliance, boundaries, and neutrality.

22 José María Ruda, *The Role of the Argentine Congress in the Treaty-Making Process* in PARLIAMENTARY PARTICIPATION IN THE MAKING AND OPERATION OF TREATIES 177–185 (S.A. Riesenfeld and F.M. Abbott eds., 1994).

23 *Id.* at 181.

24 Art. 75, CONST. NAC. The ten human rights treaties enumerated in Article 75, para. 22 are the following: the American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Convention on Economic, Social and Cultural Rights; the International Convention on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhumane or Degrading Treatments or Punishments; the Convention on the Rights of the Child.

approval of the President after a two-thirds vote in each chamber of Congress denouncing the treaty.²⁵

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.²⁶

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.²⁷ 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.²⁸

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.²⁹

25 ZAVALÍA, *supra* note 9, at 28–9, Art. 75, para. 22, CONST. NAC.

26 *Id.* at 29, Art. 75, para. 24, CONST. NAC.

27 RUDA, *supra* note 22, at 183.

28 *Id.* SEE ALSO, JORGE REINALDO A. VANOSI AND ALBERTO RICARDO DALLA VÍA, RÉGIMEN CONSTITUCIONAL DE LOS TRATADOS, 179–183 (Buenos Aires, Abeledo-Perrot, 2nd ed., 2000). For a discussion of 'reservations' generally, see, ANTHONY AUST, MODERN TREATY LAW AND PRACTICE, 125–61 (2nd ed., 2007).

29 RUDA, *supra* note 22, at 181.

At different times in the 20th century, Argentina was ruled by a *de facto* government as a result of *coups d'état*. 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.³⁰ 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.³¹

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.³²

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 treaty negotiations.³³ Partial treaties, the definition of which is the subject of much scholarship, are generally understood to be agreements between provinces.³⁴ 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.³⁵

30 Id. at 184, citing, *Municipalidad de la Ciudad de Buenos Aires c. Carlos M. Mayer*, 201 Fallos 249 (1945).

31 Id. at 184–5, citing, *Egido Ziella v. Smiriglio Hermanos*, 209 Fallos 26 (1947).

32 ZAVALÍA, *supra* note 9, at 46. Art. 124, CONST. NAC.

33 Id. Art. 125, CONST. NAC. According to Article 125, the provinces may also specifically promote, by way of local laws and their own financial means, industry, immigration, construction of railways and navigable waterways, the colonization of territory, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of their own rivers. This section of Article 125 remains relatively unchanged since first written in 1853.

34 RUDA, *supra* note 22, at 178–9. Ruda highlights that Article 125 is written with positive language and Article 126 in negative form; he contends that Article 126 powers are specifically reserved for the Federal Government.

35 ZAVALÍA, *supra* note 9, at 47. Art. 126, CONST. NAC. Article 126 also restricts the provinces from creating laws related to commerce, navigation, customs, printing money, establishing banks, and dictating legal codes without the consent of the federal government. Provinces may not pass laws related to citizenship and naturalization, bankruptcy, counterfeiting money and documents, weights, arms, and armies except in emergency

Evidence of State Practice

Argentine international relations fall under the jurisdiction of the Executive Power, specifically the President³⁶ and his or her cabinet.³⁷ Policies and practices related to foreign affairs can be found on the website of the *Ministerio de Relaciones Exteriores y Culto*,³⁸ 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*.³⁹ 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.⁴⁰ The national government also publishes a daily *Boletín Oficial* wherein all laws, ratified treaties, and other legal documents of interest are published.⁴¹

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.

36 Art. 99, CONST. NAC.

37 Art. 100, CONST. NAC.

38 Ministerio de Relaciones Exteriores y Culto: <http://www.mrecic.gov.ar/>.

39 Biblioteca Digital de Tratados: <http://tratados.cancilleria.gob.ar/index.php>.

40 Senado de la Nación Argentina: <http://www.senado.gov.ar/>. Honorable Cámara de Diputados de la Nación: <http://www.diputados.gov.ar/>.

41 Boletín Oficial de la República Argentina: <http://www.boletinoficial.gov.ar/Inicio/Index.castle>.

Annotated Bibliography of Sources

General Treaty Collections

- 1 COLECCIÓN DE TRATADOS CELEBRADOS POR LA REPÚBLICA ARGENTINA CON LA NACIONES ESTRANJERAS (Buenos Aires, Bernheim y Boneo 1863; La Nacion 1877). 2 vols.
Summary: Vol. I contains treaties concluded from 1811–1863. It is wholly available on Hathi Trust: <http://hdl.handle.net/2027/hvd.32044080444342>. Vol. II contains treaties concluded from 1865–1877. It is wholly available on Google Books: <http://books.google.com/books?id=Pk4CAAAAYAAJ>.
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 LA NACIONES EXTRANJERAS
 Juan A. Alsina and Mariano A. Pelliza and Cuberto Shoolbred (Buenos Aires, Imp. Juan A. Alsina 1884). 3 vols.
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.
 At the end of the index in the third volume is a list of treaties, mostly boundary, signed by Spain in relation to the Americas (1492–1778).
- 3 TRATADOS, CONVENCIONES, PROTOCOLOS, Y DEMÁS ACTOS INTERNACIONALES VIGENTES CELEBRADOS POR LA REPÚBLICA ARGENTINA (Buenos Aires: Imp. de “La Nación”, 1901–5). 3 vols.
Summary: This comprehensive set publishes official version of treaties, conventions, protocols and other international documents where Argentina is a party. It is wholly available in Google Books:
 Vol. 1: <http://books.google.com/books?id=K6BBAAAAYAAJ>;
 Vol. 2: <http://books.google.com/books?id=6RrWAAAAMAAJ>;
 Vol. 3: <http://books.google.com/books?id=100CAAAAYAAJ>.
Index: There are three indices in the back of each volume allowing the researcher to find documents chronologically, alphabetically by country,

or alphabetically by subject matter. Vol. 2 contains a dual index for Vols. 1 and 2.

- 4 COLECCIÓN COMPLETA DE LOS TRATADOS, CONVENCIONES, CAPITULACIONES, ARMISTICIOS, Y OTROS ACTOS DIPLOMÁTICOS DE TODOS LOS ESTADOS DE LA AMÉRICA LATINA COMPENDIDOS ENTRE EL GOLFO DE MÉJICO Y EL CABO DE HORNOS, DESDE EL AÑO DE 1493 HASTA NUESTROS DÍAS, PRECEDIDOS DE UNA MEMORIA SOBRE EL ESTADO ACTUAL DE LA AMÉRICA, DE CUADROS ESTADÍSTICOS, DE UN DICCIONARIO DIPLOMÁTICO, Y DE UNA NOTICIA HISTÓRICA SOBRE CADA UNO DE LOS TRATADOS MÁS IMPORTANTES
 Carlos Calvo (Madrid: Carlos Bailly-Bailliere, 1864). 6 vols.
Summary: A collection of full-text treaties and agreements for all of Latin America. Relevant to Argentina are Vols. I and II. Vol. I begins with the Papal Bull of 1493; Vol. 2 ends with the declaration of 1771 between Spain and England concerning *Gran Malvina*/Falkand’s Island.
Index: The Index in the back of each volume lists each document in that volume in chronological order.
- 5 TRATADOS, CONVENCIONES, PROTOCOLOS, ACTOS Y ACUERDOS INTERNACIONALES
 Francisco Centeno (Buenos Aires: Imp. J.A. Alsina, 1911). 11 vols.
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 volume 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.
- 6 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.

- 7 TRATADOS Y CONVENCIONES VIGENTES EN LA NACIÓN ARGENTINA
Ministerio de Relaciones Exteriores y Culto, (Buenos Aires: Imp. Coni, 1925). 2 vols.

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.

- 8 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.

- 9 TRATADOS DE LOS ESTADOS DEL RIO DE LA PLATA Y CONSTITUCIONES DE LAS REPÚBLICAS SUD-AMERICANAS : COLECCIÓN 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
Florencia 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 HathiTrust: <http://hdl.handle.net/2027/uc1.31822009491432>; and Google Books: <http://books.google.com/books?id=cMUrAQAAAMAJ>.

Index: The index lists treaties as they are organized in this volume: by country (República Argentina, Provincia Oriental, and República Oriental del Uruguay) and chronologically within each country, beginning in 1811. This index also lists the current constitutions for countries, provinces, and regions.

- 10 BOLETÍN OFICIAL DE LA REPÚBLICA ARGENTINA
(Buenos Aires, 1893 –).
URL: <http://www.boletinoficial.gov.ar/>.

Summary: Daily government publication that contains original version of all treaties approved by Congress and the President. Full coverage from 1895 to the present; legislation (not comprehensive) back to 1853.

Topical and Selected Treaty Publications

- Commerce
13 TRATADOS DE COMERCIO CONCLUIDOS POR LA REPÚBLICA ARGENTINA: POLÍTICA CONTRACTUAL ARGENTINA DE CARÁCTER INTERNACIONAL EN MATERIA COMERCIAL, ECONÓMICA Y DE NAVEGACIÓN, 1812–1942
Carlos Torres Gigena (Buenos Aires: Ediciones Centurión, 1943).

Summary: A detailed and informative list of bilateral treaties concluded between Argentina and foreign States from the time of independence from Spain (1810). Not a full-text compilation. Generally contains the title, signatories on both sides, signature location and date, date of Congressional approval, date and place of exchange of instruments of ratification if applicable, current status, publications, if any, to find full-text, reservations, and some relevant articles from the more recent treaties.

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

- 14 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
15 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
(Buenos Aires: Imp. J.A. Alsina, 1889).

Summary: A collection of treaties pertaining to private international law (trade, criminal law, intellectual property, procedure, etc.) written and

endorsed by a group government officials, foreign diplomats, and legal scholars throughout South America.

- 16 ACTAS DE LAS SESIONES DEL CONGRESO SUD-AMERICANO DE DERECHO INTERNACIONAL PRIVADO: INSTALADO EN MONTEVIDEO EL 25 DE AGOSTO DE 1888 Y CLAUSURADO EL 18 DE FEBRERO DE 1889 (Buenos Aires: Imp. J.A. Alsina, 1889).

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.

- 17 ACTAS DE LAS SESIONES DEL CONGRESO SUD-AMERICANO DE DERECHO INTERNACIONAL PRIVADO: INSTALADO EN MONTEVIDEO EL 25 DE AGOSTO DE 1888 Y CLAUSURADO EL 18 DE FEBRERO DE 1889 (Buenos Aires: Tip. de la Penitenciaría Nacional, 1889).

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 autor 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.

- 19 ACTAS Y TRATADOS DEL CONGRESO SUD-AMERICANO DE DERECHO INTERNACIONAL PRIVADO (MONTEVIDEO 1888-1889): COMPLETADOS CON NUEVOS DOCUMENTOS Y COMPILADOS SISTEMÁTICAMENTE Ernesto Restelli (Buenos Aires: Cámara de Diputados, 1928).

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.

- 20 SEGUNDO CONGRESO SUDAMERICANO DE DERECHO INTERNACIONAL PRIVADO, DE MONTEVIDEO, 1939-40 Ministerio de Relaciones Exteriores y Culto, Division de Asunto Juridicos (Buenos Aires: Tip. de M. Durrity, 1940).

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.

- 21 J. IRIZARRY Y PUENTE AND GWLADYS L. WILLIAMS (TRANS.), TREATIES ON PRIVATE INTERNATIONAL LAW SIGNED AT THE SECOND SOUTH AMERICAN CONGRESS ON PRIVATE INTERNATIONAL LAW, MONTEVIDEO, 1939-1940 WITH TREATIES OF THE FIRST CONGRESS HELD AT MONTEVIDEO, 1888-1889, WHICH HAVE NOT BEEN REVISED, 37 AMERICAN JOURNAL OF INTERNATIONAL LAW (1943).

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.

- 22 INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW: CIDIP-I (1975) THROUGH VII (2002) URL: http://www.oas.org/dil/private_international_law.htm.

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.

- 23 ACTA FINAL: CONFERENCIA ESPECIALIZADA INTERAMERICANA SOBRE DERECHO INTERNACIONAL PRIVADO Department of Legal Affairs, Division of Legal Codification and Integration, (Washington, D.C.: Secretary General of the Organization of American States, 1975).

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.

- 25 MANUEL A. VIEIRA, DIDIER OPERTTI, AND E. GONZALEZ LAPEYRE, CONVENCIONES DE PANAMA (1975), 1 CUADERNO DE DERECHO INTERNACIONAL PRIVADO 9 (1977).

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.
Inter-American Specialized Conference on Private International Law (Washington, D.C.: Organization of American States Secretariat for Legal Affairs, 1980). 3 Vols.

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.

Note: One year after this conference in Uruguay, the General Secretariat of the Organization of American States (OAS) hosted the *First Meeting of Experts on Private International Law*, April 9–15, 1980, in Washington, D.C. A publication of the same title memorializes the continued efforts to formulate norms

begun at the CIDIP-I and II. The result was a *Draft Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad*, and a second document pertaining to international jurisdiction. *First Meeting of Experts on Private International Law: Final Report, April 9–15, 1980, Washington, D.C.* (OAS, Washington, DC) (1980).

Bilateral Treaty Collections

- 27 ARGENTINA-ESTADOS UNIDOS: ACUERDOS BILATERALES: 1853–2000
Consejo Argentino para las Relaciones Internacionales (CARI)
(Buenos Aires: CARI, 2000).

Summary: A collection of 207 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.

- 28 ARGENTINA-ESPAÑA: ACUERDOS BILATERALES: 1857–2000
Consejo Argentino para las Relaciones Internacionales (CARI)
(Buenos Aires: CARI, 2000).

Summary: A collection of 207 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-MÉXICO: 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 BOLETÍN
Ministerio de Relaciones Exteriores (Buenos Aires, 1903–1916).

Summary: This publication's name varies slightly over time. 45 vols. published. Monthly publication includes reports of foreign affairs including treaty negotiations and ratifications.

31 MEMORIA

Ministerio de Relaciones Exteriores (Buenos Aires, 1860–).

Summary: Annual report. Throughout the late 19th and early 20th centuries, there were a multitude of *Memorias* published with varying titles. An excellent compilation of these publications can be found in: Denys Peter Myers, *MANUAL OF COLLECTIONS OF TREATIES AND OF COLLECTIONS RELATING TO TREATIES* (Cambridge, Harvard Univ. Press 1922).

32 DIGESTO DE RELACIONES EXTERIORES, 1810–1913

Francisco Centeno (Buenos Aires, Est. Grafico “Centenario” 1913).

Summary: A collection of important documents concerning the Ministry of Foreign Affairs from the time of Independence. Includes a few treaties and many documents relating to treaties; policies for conducting foreign affairs; laws establishing the Ministry and the diplomatic corps; etc.

Index: There is a topical, alphabetical index in the back of the volume.

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.¹ When the first British settlers established a penal colony in Sydney, New South Wales in 1788, they brought with them English law.² 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:

[i]t 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...³

The author wishes to thank Cate Read for her assistance in the editing of this chapter.

- 1 For a history of the development of international relations and treaty making in Australia, see Anne Twomey, *FEDERAL PARLIAMENT’S CHANGING ROLE IN TREATY MAKING AND EXTERNAL AFFAIRS* (Research Paper No. 15 1999–2000, Information and Research Services, Department of the Parliamentary Library, 2000), available at: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9900/2000RP15 and as a chapter in G LINDELL AND R BENNETT EDS., *PARLIAMENT: THE VISION IN HINDSIGHT* (2001).
- 2 For an overview of the development of common law in Australia, see CATRIONA COOK ET AL., *Chapter 3: The Common Law System in Australia* in *LAYING DOWN THE LAW* (8th ed. 2011). For more detailed accounts of the prominence of English law in Australian legal history, see Alex C. Castles, *The Reception and Status of English Law in Australia*, 2 *ADELAIDE L. REV.* 1–31 (1963), available at: <http://www.austlii.edu.au/au/journals/AdelLawRw/1963/1.html>, and D.P. O’CONNELL, *Evolution of the British Empire and Commonwealth in 1 STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW* 36–49 (1967).
- 3 WILLIAM BLACKSTONE, 1 *COMMENTARIES ON THE LAWS OF ENGLAND* 108 (1978 reprint of the 1783 edition printed for W. Strahan & T. Cadell, London & D. Prince, Oxford).