

Sources of State Practice in International Law

Second Revised Edition

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Mexico

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Issues of Treaty Succession

*Estados Unidos Mexicanos*² is the successor State of Spain in the Northern region of the former Spanish empire in the Americas. Pope Alexander VI issued a papal bull on May 4, 1493, fixing the line of demarcation of conquered territories between the Kings of Spain and Portugal thereby avoiding future conflict; this papal bull in effect granted the then-unexplored territory of what is now Mexico to the Spanish crown. Hernán de Cortes conquered the Aztec empire in 1521 and Spain ruled the territory until Mexican independence in the early 19th century. The territory was called *Nueva España* (New Spain) and its political capital was in what is today Mexico City.³

Spanish colonial law was initially a transplantation of Spanish law which at the time of conquest was “a confusing mixture of Roman law, Germanic law, canon law, royal decrees, and administrative practices.”⁴ In Mexico, Aztec customary law was not completely eliminated by the Spanish crown, especially when it was compatible with Spanish law or the Catholic Church’s interests. Some indigenous customs were eventually codified in the *Recopilación de Leyes de los Reynos de las Indias* (1680), the authoritative compilation of laws of the Americas. As evidenced by the *Recopilación*, the laws of Spanish America

were developing somewhat independently from the laws of Spain despite a similar political and legal organization.⁵

In 1810, Padre Miguel Hidalgo rang the local church bell in Dolores, Mexico in the first call (known and celebrated as *El Grito de Dolores*) for Mexican independence from Spain. But it wasn’t until August 1821 that Agustín de Iturbide successfully negotiated the *Treaty of Cordoba* with the final Spanish viceroy.⁶ The *Treaty of Cordoba* contains three guarantees that are represented in the three colors of the Mexican flag: preservation of the Catholic Church (white); absolute independence of Mexico from Spain (green); and the friendly union of Spaniards and Mexicans (red).⁷ However, the Treaty was seen as a step backwards towards colonialism and Emperor Iturbide ruled only briefly over the Mexican Empire that included present-day Central America⁸ until he was overthrown by revolutionary forces. A Constitutional Congress was convened in 1823 and drafted the first constitution of the new republic, organizing its territories into 19 states.⁹

Shortly after independence, Juan N. Rodríguez de San Miguel, in his effort to clarify what laws, decrees, orders, and treaties were in effect at the time, sorted through the myriad of Spanish and Mexican laws, and pointed to a decree of April 8, 1823 wherein the government declared invalid the *Plan de Iguala*, the *Tratado de Córdoba*, and the *Decreto de 24 de Febrero* that established the government under Agustín de Iturbide. This decree further endorsed the three guarantees of *religión, independencia, and unión* and validated the other plans, treaties, and decrees that were not in opposition to the previous article.¹⁰

1 The author is grateful to the work of several predecessors whose excellent bibliographic publications contributed significantly to the research 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>; John T. Vance and Helen L. Clagett, *A GUIDE TO THE LAW AND LEGAL LITERATURE OF MEXICO* (Washington D.C., Library of Congress 1945); Helen L. Clagett and David M. Valderrama, *A REVISED GUIDE TO THE LAW AND LEGAL LITERATURE OF MEXICO* (Washington D.C., Library of Congress 1973).

2 The exact etymology of the Nahuatl *México* is disputed. One commonly held theory is that México is named for the Aztec people, also called *Mexicas* or *Tenochas*, founders of their capital city, *Mexico-Tenochtitlan*, present day Mexico City.

3 STEPHEN ZAMORA, ET AL, *MEXICAN LAW* 8 (2005).

4 Id. at 8–9, citing GUILLERMO FLORIS MARGADANT, *INTRODUCCIÓN A LA HISTORIA DEL DERECHO MEXICANO* 28–9 (Mexico, Ed. Esfiage) (8th ed. 1988).

5 ANGEL R. OQUENDO, *LATIN AMERICAN LAW* 88–9, 109 (2nd ed. 2011), citing JOHN H. MERRYMAN ET AL, *THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA* 362, 366 (1994). See, *RECOPILACION DE LEYES DE LOS REYNOS DE LAS INDIAS* (Madrid, Julian de Paredes 1681) sec. 2.1.4 and 5.2.22, for example.

6 ZAMORA, *supra* note 3, at 18, FN 78. See, *Tratados Celebrados en la Villa de Córdoba el 24 de Agosto de 1821 (Treaty of Cordoba)* in *COLECCIÓN DE TRATADOS CON LAS NACIONES ESTRANJERAS, LEYES, DECRETOS Y ORDENES QUE FORMAN EL DERECHO INTERNACIONAL MEXICANO 1* (Imp. De J.M. Lara, Mexico) (1854).

7 JOHN T. VANCE AND HELEN L. CLAGETT, *LAW AND LEGAL LITERATURE OF MEXICO* 5–6 (Library of Congress, Washington) (1945).

8 Central America was part of Mexico when it declared its independence in 1821. In 1823, when the Mexican empire collapsed, the United Provinces of Central America declared independence from Mexico. A treaty was signed wherein Mexico recognized their independence in 1824. Some 15 years later, in 1838, the United Provinces broke up and formed independent countries.

9 ZAMORA, *supra* note 3, at 19–20.

10 JUAN N. RODRÍGUEZ DE SAN MIGUEL, *PANDECTAS HISPANO-MEXICANAS, O SEA CODIGO GENERAL: COMPRESIVE DE LA LEYES GENERALES, UTILES Y VIVAS DE LAS SIETE PARTIDAS*,

In other words, Spanish law was still good law unless it supported the Iturbide government.

There is no evidence that the newly formed Mexican State would not or did not honor any treaties previously entered into by Spain that later concerned Mexico. In fact, Mexico demonstrated it would honor treaties concluded by Spain when in 1828 it signed a *Tratado de Limites (Boundary Treaty)* with the United States¹¹ which explicitly provided for Mexico's approval of the *Treaty of Amity, Settlement, and Limits between the United States of America and His Catholic Majesty*, also known as the *Adams-Onís Treaty*.¹² The *Adams-Onís Treaty* was negotiated between Spain and the United States of America settling a border dispute that, shortly thereafter, became Mexico's border with the U.S. upon Mexican independence.¹³

Thus, the 1828 *Boundary Treaty* is a clear example of state succession. Additionally, in the January 8, 1828 *Protocol* to the first conference of the *Boundary Treaty* between the Plenipotentiary of the United States of America and Mexico, both agreed that each was bound by previous treaties with and by Spain:

The Mexican Plenipotentiaries said that their Government had invariably acted upon the principle that Mexico was bound to respect the Treaties of the Spanish Monarchy prior to the declaration of her Independence, as for instance, Great Britain had acquired rights from Spain within territory of Mexico, (in the bay of Honduras,) which, however inconvenient to the Government, it was proposed not to disturb and

RCOPILACION NOVISIMA, LA DE INDIAS, AUTOS Y PROVIDENCIAS CONOCIDAS POR DE MONTEMAYOR Y BELEÑA Y CÉDULAS TOTALMENTE INÚTILES, DE LAS REPETIDAS, Y DE LAS EXPRESAMENTE DEROGADAS (3 Vol.) Vol. III, 2-3 (Mexico, Imp. M. G. Rivera 1839-40). See also, RECOPILACIÓN DE LAS LEYES DEL GOBIERNO ESPAÑOL QUE RIGEN EN LA REPUBLICA RESPECTIVAS A LOS AÑOS DE 1788 Y SIGUIENTES. CUARTA PARTE DEL SEMINARIO JUDICIAL (Mexico, Imp. de Galvan 1829).

¹¹ Treaty of Limits, Between the United States of America and the United Mexican States, Jan. 12, 1828, 8 Stat. 372 (ratified and entered into force in 1832). See also, DERECHO INTERNACIONAL MEXICANO. TRATADOS Y CONVENCIONES CONCLUIDOS Y RATIFICADOS POR LA REPÚBLICA MEXICANA, DESDE SU INDEPENDENCIA HASTA EL 29 DE ABRIL DE 1876. PRIMERA PARTE. 115-21 (Mexico, Imp. de Gonzalo A. Esteva 1878).

¹² Treaty of Amity, Settlement, and Limits between the United States of America and His Catholic Majesty (Adams-Onís Treaty), U.S.-Spain, Feb. 22, 1819, 8 Stat. 252 (ratified by Spain in 1820; ratified by the United States in 1821, a few months before the declaration of Mexican independence).

¹³ PHILIP COOLIDGE BROOKS, DIPLOMACY AND THE BORDERLANDS: THE ADAMS-ONÍS TREATY OF 1819 191-3 (1939).

had acknowledged the existence of those rights in the recent Treaty with that Power. The Plenipotentiary of the United States replied that he did not intend to dispute the validity of a Treaty concluded between the United States and Spain at a period when Mexico formed a component part of the Spanish Monarchy; and that it was evident from former conferences and from his note on that subject that he had never controverted this principle.¹⁴

Similarly and even more explicitly, in the *Protocol* of the second conference of January 10, 1828, it was agreed:

The limits of the United States of America with the bordering territories of Mexico having been fixed and designated by a solemn treaty concluded and signed at Washington on the 22nd day of February [1819], between the respective Plenipotentiaries of the Government of the United States of America, on the one part, and of that of Spain on the other: and whereas the said treaty having been sanctioned at a period when Mexico constituted a part of the Spanish monarchy, it is deemed necessary now to confirm the validity of the aforesaid treaty of limits, regarding it as still in force and binding between the United States of America and the United Mexican States.¹⁵

Mexican law, especially Mexican civil law, was virtually indistinguishable from that of Spain long after independence. For some years after independence, the decrees of the *Cortes de España* were collected and published as part of Mexican legislation by order of the Mexican government.¹⁶ Additionally, Spanish legal texts written for Spain's colonies in the Americas, including the *cedulas* of the Council of the Indies, the *Recopilación de Indias*, the *Nueva Recopilación*, various *Fueros*, the *Siete Partidas*, and the *Novísima Recopilación*, were still an important part of Mexican law well after independence.¹⁷

¹⁴ H.R. Doc. No. 42, at 27 (1837). See also, DERECHO INTERNACIONAL MEXICANO, *supra* note 11, at 112.

¹⁵ H.R. Doc. No. 42, at 28 (1837). See also, DERECHO INTERNACIONAL MEXICANO, *supra* note 11, at 112.

¹⁶ For a collection of decrees and orders from the *Cortes* in force at the time of Independence, see, COLECCIÓN DE LOS DECRETOS Y ORDENES DE LA CORTES DE ESPAÑA QUE SE REPUTAN VIGENTES EN LA REPUBLICA DE LOS ESTADOS-UNIDOS MEXICANOS (Mexico, Imp. De Galvan 1836).

¹⁷ GUSTAVUS SCHMIDT, THE CIVIL LAW OF SPAIN AND MEXICO 98-100 (New Orleans, Thomas Rea 1851).

However, it is interesting to note that post-independence compilations of treaties published by the Mexican government routinely begin from the date of independence (1821). Indexes and compilations of treaties in force in Mexico beginning at the end of the 19th century also do not include pre-independence treaties that would have been concluded by Spain as ruler of *Nueva España*.

The years that followed Mexican independence were turbulent. Presidents changed quickly and *coups de etats* were commonplace. Slavery was abolished in 1829. Rebellion rose up in what is now Texas, culminating in 1835 with a war of separation from Mexico. Texas declared independence after defeating an unorganized Mexican Army at the Alamo, a Franciscan mission, despite being significantly outnumbered. Some 10 years later, United States support of Texas's secession from Mexico led to armed conflict between Mexico and the United States. In December 1845, Texas was made the 28th state of the United States of America. Mexico refused to accept Texas's accession. In January 1846, the United States army invaded Mexico and fought its way to Mexico City. Mexico eventually surrendered on February 2, 1848, and signed the *Treaty of Guadalupe Hidalgo*¹⁸ at which time Mexico gave up two-fifths of its territory: Texas, New Mexico, Arizona, California, Nevada, and part of Colorado.¹⁹ The U.S.-Mexico borders were further defined in 1853 with the Gadsden Treaty.²⁰

From the late 17th century to 1821, Spain made almost 300 land grants to promote development in the frontier lands, reward Spanish subjects, and create a buffer zone between Spanish settlements and Indian tribes. About half of the land grants were awarded to individuals and half to communities (for communal use in perpetuity), including 23 grants to Native American *pueblos*. Most land grants were made in what is today the Southwestern United States. At the time of the land grants, the territory was claimed and controlled by Spain and later by an independent Mexico who continued to recognize the land grants, adhere to the Spanish land policies, and consider the residents Mexican citizens. In accordance with the *Treaty of Guadalupe Hidalgo*, the United States agreed to recognize and protect the property rights of Mexican citizens living in the newly acquired areas.²¹

18 Treaty of Peace, Friendship, Limits, and Settlement (Treaty of Guadalupe Hidalgo), U.S.-Mexico, Feb. 2, 1848, 9 Stat. 922 (ratifications exchanged May 30, 1848; proclaimed July 4, 1848).

19 ZAMORA, *supra* note 3, at 18–21.

20 Treaty of Boundary, Cession of Territory, Transit of Isthmus of Tehuantepec, Etc. (Gadsden Treaty), U.S.-Mexico, Dec. 30, 1853, 1 U.S.T. 1121 (ratifications exchanged and proclaimed June 30, 1854).

21 GOVERNMENT ACCOUNTING OFFICE, TREATY OF GUADALUPE HIDALGO: FINDING AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN

Treaty Ratification and Implementation

Mexico signed in 1986 and ratified in 1988 the *Vienna Convention on the Law of Treaties between States and International Organization or between International Organizations*,²² and applies the definition of treaties set forth in Article 2 of the *Vienna Convention*. Treaty formation in Mexico complies with the *Vienna Convention*.²³

The Mexican Constitution recognizes treaties as the supreme law of the land.²⁴ Nonetheless, the role of treaties in Mexican domestic law is a point of controversy. Overturning a 1992 precedent-setting decision that placed treaties on the same plane as federal law, the Mexican Supreme Court in 1999 in plenary session held that international treaties take precedent over domestic federal or state law even when the domestic law is adopted after the international treaty. The Court expressly held that only the Mexican Constitution is superior to international treaties.²⁵

Treaty formation and implementation in Mexico is governed principally by three cohesive provisions: the Mexican Constitution; the *Organic Law of the Federal Public Administration (LOAPF)*;²⁶ and the *Law of Treaties*.²⁷ In sum, the President of Mexico or his designees, concludes and signs a treaty and then submits it to the Senate for approval. After Senate approval and after complying with depository and other details, it is published in the *Diario Oficial de la Federación (DO)* in accordance with the Federal Civil Code and the *Law of Treaties*.²⁸

NEW MEXICO 3–4 (GAO-04–59, 2004), available at <http://www.gao.gov/new.items/do459.pdf>. This is the second of two reports created to address a century of grievances by the heirs of land grant holders claiming unfair treatment by the U.S. government.

22 Vienna Convention on the Law of Treaties between States and International Organization or between International Organizations, May 23, 1969, T.S. No. 58, 1155 UNTS 331.

23 ZAMORA, *supra* note 3, at 90.

24 Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, Art. 133, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

25 ZAMORA, *supra* note 3, at 90, citing *Amparo en Revisión* 1475/98 in SEMANARIO JUDICIAL DE LA FEDERACIÓN, vol. X 46 (1999).

26 Ley Orgánica de Administración Pública Federal [LOAPF] [Federal Public Administrative Law], *as amended*, Diario Oficial de la Federación [DO], 2 de Abril de 2013 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/153.pdf>.

27 Ley sobre la Celebración de Tratados [Law of Treaties], Diario Oficial de la Federación [DO], 2 de Enero de 1992 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/216.pdf>.

28 JORGE PALACIOS TRIVIÑO, TRATADOS: LEGISLACIÓN Y PRACTICA EN MÉXICO 55, 78 (Secretaría de Relaciones Exteriores de México, Universidad Iberoamericana 2007).

The Constitution grants power and obligates the President of Mexico to manage foreign affairs and conclude international treaties. Treaty making power includes the ability to enter into, conclude, suspend, modify, and amend treaties; create reservations; and formulate interpretive declarations. While doing so, the President follows the guidelines of: self-determination of the people; non-intervention; peaceful settlement of conflicts; proscription of the threat or use of force in international relations; legal equality of the States; international cooperation for development; and the struggle for peace and international security. The President must submit all such action to the Senate for approval.²⁹

The Constitution also grants the Senate exclusive authority to analyze the foreign affairs as developed by the Executive Branch by reviewing annual reports of the President of the Republic and the Secretary of the corresponding office to Congress. Furthermore, the Senate has the power to approve the treaties and diplomatic conventions that the Executive Branch has signed including its decision to end, denounce, suspend, modify, amend, make reservations, and formulate interpretive declarations regarding the same.³⁰

The Mexican Constitution, the laws of Congress, and all treaties created in accordance with the Constitution, concluded by the President, and approved by the Senate, are the supreme law of the land. The judges of each State shall abide by this Constitution, laws, and treaties even if they are contrary to the Constitutions or laws of the States.³¹ There are other articles that address fine points or restrictive clauses on treaty making power, such as the prohibition for States from entering into treaties with other domestic or foreign States.³² Still others speak to various types of treaties, such as extradition treaties.³³

LOAPF charges the *Secretaría de Relaciones Exteriores* (Secretariat of Foreign Affairs) (SRE) with coordinating the foreign affairs of all the entities of the Federal Public Administration including all classes of treaties, conventions, and agreements to which Mexico is a party.³⁴ By way of other articles, it

TRATADOS is a superbly detailed account of treaty-making practice and procedure in Mexico. The *DO* is the official gazette of Mexico. In accordance with the *Código Civil Federal de México*, Art. 3-4 (2000), no law takes effect until three days after it is published in the *DO* unless explicitly stated otherwise in the text of the law. The *Law of Treaties*, Art. 4, also requires publication in the *DO* after Senate approval is reached.

²⁹ Constitución (1917) Art. 89 (x).

³⁰ Constitución (1917) Art. 76 (I).

³¹ Constitución (1917) Art. 133.

³² Constitución (1917) Art. 117.

³³ Constitución (1917) Art. 15.

³⁴ TRATADOS, *supra* note 28, at 73 citing LOAPF Art. 28.

grants the entities, or federal agencies, the authority to do the same within each agency's narrow area of expertise and jurisdiction. For example the Secretariat of the Environment and Natural Resources has the power to conclude international treaties on behalf of the SRE in its narrow area of competence.³⁵

Additional guidance is provided to the SRE in its handling of treaty affairs through its interior regulations. These regulations mandate, for example, the SRE to provide advisory opinions on the value of signing on to a treaty or participating in treaty negotiations; and to maintain a registry of treaties concluded by Mexico and its agencies.³⁶

The *Law of Treaties* distinguishes between two types of international instruments: treaties (*tratados*) and inter-institutional agreements (*acuerdos interinstitucionales*). Article 2 defines a treaty as an international agreement entered into by the government of Mexico that involves one or more subjects pertaining to public international law. Treaties must be approved by the Senate in compliance with Article 76 of the Constitution, and are the supreme law of the land according to the terms of Article 133 of the Constitution. Inter-institutional agreements also deal with matters of public international law. They can be negotiated and entered into by a public administrative agency at the state or municipal level with one or more foreign government agencies or international organizations as long as there is no existing treaty on the matter. The subject-matter of inter-institutional agreements is limited to areas in which the state, municipality, or agency already enjoys exclusive jurisdiction. Inter-institutional agreements are not approved by the Senate, are not published in the *DO*, and are not the supreme law of the land.³⁷

Treaty practice in Mexico, as in all countries, differs depending on whether it is a bilateral treaty or a multilateral treaty. With multilateral treaties, the SRE becomes aware of an international conference, for example, either of its own accord or it is brought to the SRE's attention by a relevant federal agency; and the SRE promotes Mexico's participation in the conference. In the case of bilateral treaties, the SRE investigates the efficacy of potential bilateral agreements and then coordinates the necessary parties and steps that might lead to a bilateral agreement.³⁸

³⁵ TRATADOS, *supra* note 28, at 73-4. See also, LOAPF Art. 32 Bis. Sec. IX.

³⁶ Id. at 76. See also, Reglamento Interior de la Secretaría de Relaciones Exteriores, as amended, Diario Oficial de la Federación [DO], 4 de Septiembre de 2009 (Mex.), available at <http://www.ordenjuridico.gob.mx/Federal/Combo/R-280.pdf>.

³⁷ See generally, TRATADOS, *supra* note 28, at 288-98; See also, JORGE VARGAS, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS 22-4 (1998).

³⁸ MONROE LEIGH, ET AL, (ED.), NATIONAL TREATY LAW AND PRACTICE 106 (2003).

For bilateral treaties, if the other State has an embassy or consular office in Mexico, communication generally begins by sending over a representative of the Mexican government who is a specialist in the area of the proposed bilateral treaty to begin discussions. If the initial proposal is positively received and the recipient is interested in pursuing a bilateral treaty, then actual negotiations begin with delegations of both countries meeting to write the text of the treaty. For Mexico, the delegation usually consists of members of the SRE along with experts in the subject matter of the proposed treaty. At times it may be pertinent to consult with private sector interested parties and experts as well. Throughout the process, it is crucial to keep the Mexican Senate abreast of the progress of the negotiations in order to help facilitate Senate consideration after the treaty has been agreed upon by both States. If there is more than one round of negotiations, it is customary to alternate the country hosting the negotiations. It is also not uncommon to meet in a third, neutral country simply for convenience.³⁹

When the parties finalize the language of the treaty, an article is created in the treaty indicating as much. To show their consent to the adopted language, the head negotiators sign their initials to the unofficial document. This final document generally consists of a treaty title, preamble, substantive articles, and final clauses. Preambles have been a part of Mexican bilateral treaties since 1857 and customarily contain a Christian invocation, such as the name of God as the ultimate governor of the universe. The preamble also contains the names of the parties or States involved and any designees of the States. Common concepts in the Preamble include friendship between the States, the motives of the treaty, and any previous related treaties.⁴⁰ The final sentences contain the legal clauses, obligations, and steps necessary to implement the treaty. It includes how to resolve disagreements that might arise under the treaty. Bilateral treaties are concluded in each of the languages of the parties to the agreement, and each is wholly valid, official, and authentic. Both States sign the identical but linguistically distinct documents.⁴¹

Bilateral treaties concluded by Mexico are finalized on special paper containing the national seal or coat-of-arms. Although the language is agreed upon, they are often not signed immediately so that the parties can consider further their legal obligations under the treaty. It is generally the Secretary of Foreign Affairs who signs the document in the Federal District of Mexico. If the treaty is signed abroad, it is usually the Mexican Ambassador to that country

39 TRATADOS, *supra* note 28, at 118-9.

40 *Id.* at 120-21.

41 *Id.* at 122-23.

who signs the treaty. Despite being signed, all parties know the bilateral treaty is not yet binding as it lacks ratification by the Senate. Nonetheless, after signature, certified copies are made of the original and the original is deposited in the historical archive of the nation.⁴²

For both bilateral and multilateral treaties, the Treaty Section of the Legal Advisor's Office of the SRE plays an advisory role throughout the negotiations process. Although a government agency with particular specialization may engage in the actual negotiations for a relevant treaty, the agency is continuously supported by the SRE. The SRE may gather and distribute opinions of affected agencies and entities. As negotiations are underway for both bilateral and multilateral treaties with significant social, political, or economic implications, representatives often appear before Congress to explain the importance and benefits of the treaty. Ultimately, the SRE issues a report at the conclusion of the negotiations that addresses any issues or areas of concern in the treaty including an assessment as to its affect, if any, on domestic law. If the report is not favorable, the SRE's concerns must be addressed and treaty provisions adjusted until the SRE issues a favorable report. Once this occurs, the treaty is ripe for signature.⁴³

Once a bilateral or multilateral treaty is signed, it is up to the Executive Power to submit the treaty to the Senate for approval. In practice, the SRE through the Secretary of the Government (SG) submits the treaty to the Senate. The Senate's Commission on Foreign Relations studies the treaty along with relevant specialized standing commissions. Each commission issues a report to the Senate who then performs two readings of the report during which time the senators engage in an article-by-article analysis. At the end, the Chamber of Senators votes on a motion of approval. The Senate must vote and approve reservations, declarations, or understandings at this time as well. If the Senate approves the treaty it issues a decree to the SG and the President.⁴⁴

After the Senate approves the treaty, the President must ratify the treaty before it can become law.⁴⁵ For bilateral treaties, the SRE ensures that instruments of ratification are exchanged or, where there are no instruments of ratification, formal notes indicating Senate approval are exchanged. For multilateral treaties, the SRE deposits instruments of ratification as established in the treaty.⁴⁶ Note that most multilateral treaties require a certain number of States to ratify a treaty before it has the force of international law.

42 *Id.* at 124-27.

43 NATIONAL TREATY, *supra* note 38, at 106-7.

44 *Id.* at 108-9.

45 Constitución (1917), Art. 89 (x)

46 NATIONAL TREATY, *supra* note 38, at 109; TRATADOS, *supra* note 28, at 155-58.

After signature, Senate approval, and ratification, the Secretary of the SRE prepares for the President an SRE-endorsed decree which includes the complete text of the treaty. The President orders its publication in the *DO* in accordance with the Federal Civil Code, after which it becomes the supreme law of the land.⁴⁷

The *Law of Treaties* obligates the SRE to maintain a registry of all treaties entered into force in which Mexico is a party. The registry is managed by the Legal Adviser's Office and is available to the public. The SRE also registers all treaties with the United Nations.⁴⁸

The *Law of Treaties* permits agencies of the federal, state, or local governments to enter into international agreements within their limited scope of authority. These agreements are not treaties as they do not require Senate approval or ratification. Nonetheless, agencies entering into international agreements must alert the Department of Foreign Affairs of the intent to enter into international agreements by way of written report. These agreements are negotiated by the local agency with, if desired, the support of the SRE. The Legal Adviser's Office analyzes the draft agreement, consults with relevant and interested parties, and then issues a report through the SRE. The Legal Adviser's Office ensures the agency is not exceeding its jurisdiction or interfering with the interests of the federal government. Like treaties, once concluded all inter-institutional agreements are registered with the SRE.⁴⁹

Evidence of State Practice

Diplomatic Relations of Mexico are controlled by the Executive Power headed by the President and managed by SRE. Evidence of state practice can be seen in the Constitution as well as the stated mission and vision of the Secretariat.⁵⁰ The SRE also maintains an extensive website of historical documents.⁵¹

Both houses of Congress maintain webpages and publish their daily proceedings online and in their respective publications, including full-text laws passed and treaties approved.⁵² The national government also publishes a

47 NATIONAL TREATY, *supra* note 38, at 110.

48 *Id.*; Ley de Tratados, Art. 6.

49 NATIONAL TREATY at 111–12; Ley de Tratados, Art. 7–8.

50 For more information on the SRE, see Secretaría de Relaciones Exteriores, <http://www.sre.gob.mx/>.

51 Acervo Histórico Diplomático: <http://www.sre.gob.mx/acervo/>.

52 Senado de la República: <http://www.senado.gob.mx/>. Cámara de Diputados: <http://www.diputados.gob.mx/inicio.htm>.

daily *Diario Oficial* wherein all laws, ratified treaties, and other legal documents of interest are published.⁵³

Annotated Bibliography of Sources

General Treaty Collections

- 1 COLECCIÓN DE TRATADOS CON LAS NACIONES ESTRANJERAS, LEYES, DECRETOS Y ORDENES QUE FORMAN EL DERECHO INTERNACIONAL MEXICANO

(Mexico: Impr. De J.M. Lara, 1854).

Summary: A collection of treaties from 1821–1854, beginning with the *Tratado de Córdoba* in 1821. The index is a chronological list of 158 treaties from 1821–1854 plus several additional conventions. Wholly available in Google Books and Hathi Trust at <http://hdl.handle.net/2027/umn.31951001873701y>.

Index: The index in the back of the volume lists all treaties published in this volume in chronological order just as they appear in this volume.

- 2 TRATADOS DE MÉXICO: SOBERANÍA Y TERRITORIO 1821–1910
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 2000).

Summary: Beautifully illustrated coffee-table style book providing a detailed narrative of how treaties fit into Mexican history during the stated time period.

Note: The appendix has two parts, the first containing reprints of Mexico's treaties involving commerce and the second containing Mexico's boundary treaties with its neighbors.

- 3 DERECHO INTERNACIONAL MEXICANO. TRATADOS Y CONVENCIONES CONCLUIDOS Y RATIFICADOS POR LA REPÚBLICA MEXICANA, DESDE SU INDEPENDENCIA HASTA EL AÑO ACTUAL, ACOMPAÑADOS DE VARIOS DOCUMENTOS QUE LES SON REFERENTES. PRIMERA PARTE (Mexico: Imp. de Gonzalo A. Esteva, 1878).

Summary: Volume I contains the treaties and conventions concluded and ratified by Mexico from Independence (1821) to 1877. Wholly available in Google Books at: <http://books.google.com/books?id=bscCAAAYAAJ>.

Index: The index in the beginning of this volume lists countries alphabetically then treaties chronologically within each. A second index lists all treaties chronologically.

53 *Diario Oficial* de la Federación: <http://www.dof.gob.mx/>.

Note: The appendix at the back of the volume reprints a number of documents believed to be interesting and relevant to the study of international relations in Mexico, such as the treaty between the Mexican Empire and the Comanche Nation (1822).

- 4 DERECHO INTERNACIONAL MEXICANO. TRATADOS Y CONVENCIONES CELEBRADOS Y NO RATIFICADOS POR LA REPÚBLICA MEXICANA: CON UN APENDICE QUE CONTIENE VARIOS DOCUMENTOS IMPORTANTES. SEGUNDA PARTE

(Mexico: Imp. de Gonzalo A. Esteva, 1878).

Summary: This volume contains treaties and conventions concluded but not ratified by Mexico. It was created purely for historical interest and only a small number of copies were printed and distributed. Wholly available in Google Books at: <http://books.google.com/books?id=oeHqAAAAMAAJ>.

Index: The index in the beginning of this volume lists countries alphabetically then treaties within each. A second index lists all treaties chronologically.

- 5 DERECHO INTERNACIONAL MEXICANO. LEYES, DECRETOS Y ORDENES QUE FORMAN EL DERECHO INTERNACIONAL MEXICANO O QUE SE RELACIONAN CON EL MISMO. TERCERA PARTE

(Mexico: Tip. Lit. de Filomeno Mata, 1879).

Summary: Volume III contains the laws, decrees, and orders that together form Mexican international law or are related to Mexican international law. Some treaties and conventions are contained in this volume that is organized topically and alphabetically (beginning with *Agentes Comerciales Privados*). Wholly available in Google Books at: <http://books.google.com/books?id=baJJAQAIAAJ>.

Index: The index in the back of the volume is organized alphabetically by topic and chronologically within each topic.

- 6 DERECHO INTERNACIONAL MEXICANO. TRATADOS Y CONVENCIONES CONCLUIDOS Y RATIFICADOS POR LA REPÚBLICA MEXICANA DESDE SU INDEPENDENCIA HASTA EL AÑO 1896, ACOMPAÑADOS DE VARIOS DOCUMENTOS QUE LES SON REFERENTES. SEGUNDA PARTE

(Mexico: Imp. y Lit. de F. Díaz de León Suc., 1896).

Summary: This second *segunda parte* is intended to replace the original *segunda parte* in which a limited number of exemplars were printed and only for historical purposes as those treaties were never ratified. This new *segunda parte* effectually continues the original (and only) *primera parte* by publishing

treaties and conventions concluded and ratified by Mexico between December 7, 1877 and March 16, 1896. Bilateral treaties with non-Spanish speaking countries are presented in side-by-side columns in both languages. Multilateral treaties are also reprinted. Wholly available in Hathi Trust at: <http://hdl.handle.net/2027/mdp.35112104563954>.

Index: The index in the back of the volume lists countries alphabetically then treaties within each chronologically. Multilateral treaties are listed last.

- 7 TRATADOS Y CONVENCIONES VIGENTES
Secretaría de Relaciones Exteriores (Mexico: J.I. Guerrero y Ca., Suc. de F. Díaz de León, 1904).

Summary: A collection of treaties in force published by the Department of Foreign Affairs of Mexico, organized chronologically beginning with the *Tratado de Paz, Amistad y Límites, de 2 de Febrero de 1848, con los Estados Unidos de América*. Wholly available in Google Books at: <http://books.google.com/books?id=ljooAQAAMAAJ>.

Index: There are two indices in the back of the volume: the first is chronological; the second is alphabetical by country.

- 8 TRATADOS Y CONVENCIONES VIGENTES
Secretaría de Relaciones Exteriores (Mexico: Tip. "Artística," 1909).

Summary: This volume is an appendix to the above collection of treaties and conventions plus an historical sketch of Mexico's treaty relations from the time of independence to 1909. It also includes a chronological list of treaties arranged under each Mexican president. This work is based partly on the 1859 index created by Matías Romero (see no. 13 below).

- 9 TRATADOS Y CONVENCIONES VIGENTES ENTRE LOS ESTADOS UNIDOS MEXICANOS Y OTROS PAÍSES
Secretaría de Relaciones Exteriores (Mexico: Imp. de la Secretaría de Relaciones Exteriores, 1930-1938).

Summary: A six-volume series of treaties in force in Mexico. Volume I (1930) contains bilateral treaties organized alphabetically by foreign country. Volumes II and III (1931) contain multilateral treaties organized chronologically by date of signature. Volume IV (1938) contains multilateral and bilateral treaties since 1930 and conventions of the International Labor Conference. Volume V contains conventions of the International Labor Conference. Volume VI contains bilateral treaties since 1930.

Index: The indices for volumes I and VI organize the treaties alphabetically by country. The indices for volumes II-V are organized chronologically.

- 10 DIARIO OFICIAL DE LA FEDERACIÓN
(Mexico, 1917–).

Summary: Daily publication of laws, decrees, treaties and other legal documents. Known simply as *Diario Oficial* from 1917–1986; known by several names from 1722–1917. Available free online at: <http://dof.gob.mx/index.php> from 1917 (year of current Mexican constitution).

- 11 TRATADOS CELEBRADOS POR MÉXICO
Senado de La República and Secretaría de Relaciones Exteriores
(Mexico: El Senado, 1993–).

Summary: Annual publication containing the full-text of bilateral and multilateral agreements, and other international instruments from 1823 to the present. Treaties are arranged chronologically by date of signature or conclusion. Treaties can now be found on the website of the SRE: <http://www.sre.gob.mx/tratados/> and http://www.ordenjuridico.gob.mx/Publicaciones/CDs2008/CDTratados/cd_tratados.php.

Index: There are several indices: all treaties listed chronologically; bilateral treaties listed alphabetically by foreign country; multilateral treaties listed chronologically; bilateral accords listed chronologically; international instruments of past years adopted this year by Mexico listed chronologically by original date of treaty formation.

Note: Previous title: *Tratados Ratificados y Convenios Ejecutivos Celebrados Por Mexico* (1973–1993).

- 12 TRATADOS VIGENTES CELEBRADOS POR MÉXICO (1836–2008)
URL: http://www.ordenjuridico.gob.mx/Publicaciones/CDs2008/CDTratados/cd_tratados.php.

Summary: Interactive website published cooperatively by several government agencies. Contains full-text (unofficial and unauthenticated) pdf documents of all treaties, bilateral and multilateral in force in Mexico, as well as related jurisprudence and national laws pertaining to treaties. Search using interactive map or advanced search. Each treaty contains date of signature, ratification, and entry into force.

Treaty Indexes

- 13 TABLA SINÓPTICA DE LOS TRATADOS Y CONVENCIONES QUE HAN NEGOCIADO LOS ESTADOS DE MÉXICO CON LAS NACIONES EXTRANJERAS
Matías Romero (Tabasco (Mex.): J.M. Flores, 1859).

Summary: This volume contains a helpful table summarizing all 24 treaties Mexico has signed with foreign countries (including Texas) up to the time of

publication (Mexico recognized Texas's independence at this time). The table lists the foreign country, the objective of the treaty, the Mexican and foreign officials involved, the date and place of conclusion, dates of ratification for Mexico and the foreign State, date of publication in Mexico, and duration of the treaty. Additionally, the author details the five types of treaties (friendship, commerce and navigation; conventions; peace; boundaries; alliances; abolition of slavery) and explains the motivation behind each type. The author also summarizes the key points of each of the 24 treaties. There is no index and no full-text reprint of the treaties.

- 14 MÉXICO: RELACIÓN DE TRATADOS EN VIGOR
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1985–).

Summary: Published sporadically, each issue contains a list of treaties in force in Mexico. Organized in two sections, bilateral (alphabetically by foreign country) and multilateral (alphabetically by subject). Introductory note directs users to the *Colección Tratados Ratificados y Convenios Ejecutivos Celebrados Por Mexico* and the *United Nations Treaty Series (UNTS)* for full-text. *Consolidated Treaty Series (CTS)* and *UNTS* citations given in chart along with dates of adoption, ratification, and entry into force.

- 15 GUÍA DE TRATADOS PROMULGADOS Y OTROS INSTRUMENTOS INTERNACIONALES VIGENTES SUSCRITOS POR MÉXICO
Secretaría de Gobernación (Mexico: Porrúa, 2005).

Summary: Chronological guide to all treaties and international instruments concluded by Mexico from 1836–2004. Provides dates of signing and promulgation, whether bilateral, multilateral, or international organization, and one or two-word description. Does not indicate current status (whether currently in force). Also available online from the website of the Mexican government agency, *Orden Jurídico Nacional* at <http://www.ordenjuridico.gob.mx/Publicaciones/guia%20de%20tratados2005.pdf>.

Topical and Selected Treaty Publications

- 16 U.S.–MEXICAN TREATIES
Richard A. Westin (Buffalo (NY): Hein, 1996).

Summary: Originally an 11-volume set containing all bilateral and multilateral treaties in force between the United States of America and Mexico, and multilateral treaties to which both countries are signatories, from 1848 (*Treaty*

of *Guadalupe Hidalgo*) to 1994. Organized chronologically by signing date. Volume 12 is a 1999 Supplement covering 1992 to 1997. Volume 13 is a 2001 Supplement covering 1997 to 2000.

Index: Each volume begins with a chronological index of the treaties contained in each volume, followed by a subject index referencing the appropriate volume. Each treaty entry has a citation to an official or unofficial full-text source. There is also a list of treaties with multiple signing dates. Following the indices is the full-text reprint of the treaties.

- 17 ARGENTINA-MÉXICO: ACUERDOS BILATERALES, 1912-2000
(Buenos Aires (Arg.): Consejo Argentino para las Relaciones Internacionales, 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 treaties chronologically by date of signature; the second organizes the agreements topically. Treaties and agreements are reprinted in full in chronological order beginning with their first in 1912.

Diplomatic Documents

- 18 BOLETÍN OFICIAL DE LA SECRETARÍA DE RELACIONES EXTERIORES
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1895-1935).

Summary: Collection of documents published monthly or bimonthly pertaining to the work of the SRE during the course of the year. Includes documents related to treaty negotiations, laws, decrees, circulars, consular reports, legal notices, reports from various departments, and an accounting of finances.

- 19 INDICE DEL BOLETÍN OFICIAL DE LA SECRETARÍA
DE RELACIONES EXTERIORES, 1895-1923 SECRETARÍA
DE RELACIONES EXTERIORES (MEXICO: SECRETARÍA DE
RELACIONES EXTERIORES, 1924)

Summary: A comprehensive index to the *Boletín* organized topically. References to treaties generally can be found under "Tratados y convecciones"; references to bilateral treaties can be found "Tratados y convecciones, entre México y" where they are organized further by topic such as "Arbitraje" and "Comercio."

- 20 MEMORIA
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1821-).

Summary: Annual publication by the SRE to the Mexican Congress. Contains information about treaties and conventions concluded by Mexico. For example, Vol. (1969-70) contains a section on treaties signed, approved, ratified, and promulgated between Sept. 1, 1969 and August 30, 1970. In this section the treaties are listed chronologically under those four sub-headings. The full-text of some of the listed treaties is reprinted in the appendix of this volume.

Note: There are several government publications entitled *Memoria* that cover various periods in the 19th c. and focus on unique aspects of the work of the SRE. For a more complete listing, see, Denys Peter Myers, *Manual of Collections of Treaties and of Collections Relating to Treaties* (Harvard Univ. Press, Cambridge) (1922).

- 21 LA DIPLOMACIA MEXICANA
Secretaría de Relaciones Exteriores (Mexico: Tip. "Artística," 1910).

Summary: A three-volume publication by the Department of Foreign Affairs that primarily includes notes of foreign relations and secondarily includes a selection of relevant treaties concluded by Mexico in conjunction with the activities of the SRE. Organized chronologically beginning in 1821. Not an exhaustive collection of treaties.

- 22 ARCHIVO HISTÓRICO DIPLOMÁTICO MEXICANO
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1923-1931).

Summary: Collection of numerous volumes each focusing on an historical aspect of Mexico's foreign relations. Contains treaties and other documents. In Vol. 22 (1927), for example, *El Tratado de Paz con España* contains not only the text of the treaty but also all the letters and documents exchanged leading up to the treaty. Many volumes are available as scanned versions of the print volumes, open-access, on the website of the SRE: <http://www.sre.gob.mx/acervo/> (go to "Biblioteca Digital de Relaciones Internacionales").

- 23 COLECCIÓN DEL ARCHIVO HISTÓRICO DIPLOMÁTICO MEXICANO.
SERIE TRATADOS
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1974).

Summary: A 13-volume monographic series with each title devoted to a bilateral commercial treaty between Mexico and a foreign country (Switzerland,

France, Belgium/Luxembourg, South Korea, Netherlands, United Arab Emirates, Yugoslavia, Canada, Japan, Italy, El Salvador, Costa Rica, and Greece).

- 24 ARCHIVO HISTÓRICO DIPLOMÁTICO MEXICANO: CATÁLOGO GENERAL DE PUBLICACIONES, 1923–1991
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1991).

Summary: This catalog lists all publications of the SRE organized into five major time periods, or *epocas*. The *Tercera Epoca* (third period) is from 1973–1980. During this period the government published a series of thirteen treaties, all commercial in nature, and all in 1974. The bibliographic information of few other treaties is also published in this catalog, including several 19th c. treaties published in the 1920s.

Index: There are three indices in the back of the volume where publications are organized alphabetically first by title, then by author, and finally by translator, compiler, and prologue author.

- 25 POLÍTICA EXTERIOR DE MÉXICO: 175 AÑOS DE HISTORIA
Secretaría de Relaciones Exteriores (Mexico: Secretaría de Relaciones Exteriores, 1985). 4 vols.

Summary: Created and published in commemoration of Mexico's 175th anniversary of the beginning of independence (1810), and 75 years since the Mexican Revolution (1910). Contains three sections: a documentary history of Mexico's foreign relations beginning in the 19th century; an anthology of reflections about Mexico's foreign affairs including difficult times and struggles over the last two centuries; and a collection of essays regarding some of the principle themes that have figured into the agenda of Mexico's foreign affairs in recent times.

Yearbooks and Digests of State Practice

- 26 ANUARIO MEXICANO DE DERECHO INTERNACIONAL
(Mexico: Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2001–).

Summary: Mostly in Spanish, some English and French. Combines articles from leading scholars, commentaries, summaries of court proceedings, and analysis and explanation of state practice. Available full-text online at UNAM's IJ: <http://biblio.juridicas.unam.mx/revista/DerechoInternacional/>.

Note: Other title: *Mexican Yearbook of International Law*.

Nigeria

Mary Rumsey

Issues of Treaty Succession

Nigeria gained its independence from the United Kingdom in 1960.¹ Until that time, the United Kingdom conducted Nigeria's foreign affairs, including the negotiation, conclusion, and ratification of treaties. Upon independence, Nigeria issued the following declaration in an exchange of diplomatic letters:

- (i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall henceforth, in so far as such instrument may be held to have application to Nigeria, be assumed by the Government of the Federation of Nigeria;
- (ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Nigeria shall henceforth be enjoyed by the Government of the Federation of Nigeria.²

At independence, Nigeria was bound by at least 334 treaties inherited from the United Kingdom.³ Despite military coups and other changes in government, Nigeria has adhered to this declaration.⁴ The Nigerian Constitution, in its description of the country's "foreign policy objectives", refers to "respect for international law and treaty obligations".⁵ The other foreign policy objectives listed in the 1999 Constitution include promotion and protection of the

¹ Nigeria Independence Act 1960, 8 & 9 Elizabeth II, c. 55 (Eng.).

² Nigeria-United Kingdom, Exchange of Letters Constituting an Agreement relative to the Inheritance of International Rights and Obligations by the Government of the Federation of Nigeria, Oct. 1, 1960, 384 U.N.T.S. 207, 208.

³ Babafemi Akinrinade, *Nigeria*, in INTERNATIONAL LAW AND DOMESTIC LEGAL SYSTEMS: INCORPORATION, TRANSFORMATION, AND PERSUASION 453 (Dinah Shelton ed., 2011). For example, Nigeria's Operational Code of Conduct for Nigerian Forces (Lagos: Federal Republic of Nigeria, 1967) requires compliance with the Geneva Conventions of 1949, which the UK ratified in 1957.

⁴ CHRIS NWACHUKWU OKEKE, THE THEORY AND PRACTICE OF INTERNATIONAL LAW IN NIGERIA 10 (Enugu, Nigeria: Fourth Dimension Publishers, 1986); J.B. Ayala, *Introduction*, in 1 Nigeria's Treaties in Force 1970–1990 22 (1990).

⁵ Nigerian Constitution (1999), § 19(d).