

## MODERN TREATY LAW AND PRACTICE

This new edition of a textbook first published in 2000 provides a comprehensive account of the law of treaties from the viewpoint of an experienced practitioner. As such, it is the first, and only, book of its kind. Aust provides a wealth of examples of the problems experienced with treaties on a daily basis, not just when they are the subject of a court case. He explores numerous precedents from treaties and other related documents, such as memorandums of understanding, in detail. Using clear, accessible language, the author covers the full extent of treaty law, drawing examples from both treaties and memorandums of understanding. *Modern Treaty Law and Practice* is essential reading for teachers and students of law, political science, international relations and diplomacy who have an interest in treaties.

ANTHONY AUST was a visiting professor at University College London, the School of Oriental and African Studies, London, the London School of Economics (his alma mater) and Notre Dame University at London. For thirty-five years he worked in the legal division of the British Foreign and Commonwealth Office, ending as deputy to the Legal Adviser. He is now a consultant on public international law to law firms in London and abroad, governments and international organisations.

Cambridge University Press

978-1-107-02384-0 - Modern Treaty Law and Practice: Third Edition

Anthony Aust

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-02384-0 - Modern Treaty Law and Practice: Third Edition

Anthony Aust

Frontmatter

[More information](#)

# MODERN TREATY LAW AND PRACTICE

THIRD EDITION

ANTHONY AUST

*Formerly Deputy Legal Adviser,  
Foreign and Commonwealth Office, London*



Cambridge University Press  
 978-1-107-02384-0 - Modern Treaty Law and Practice: Third Edition  
 Anthony Aust  
 Frontmatter  
[More information](#)

**CAMBRIDGE**  
 UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107023840](http://www.cambridge.org/9781107023840)

© Anthony Aust 2013

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2013

First edition published by Cambridge University Press 2000

Second edition published by Cambridge University Press 2007

Third edition published by Cambridge University Press 2013

3rd printing 2014

Printed in the United Kingdom by Clays, St Ives plc

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Aust, Anthony.

Modern treaty law and practice / Anthony Aust, Formerly Deputy Legal Adviser,  
 Foreign and Commonwealth,  
 London. – Third edition.

pages cm

Includes bibliographical references and index.

ISBN 978-1-107-02384-0 (hardback)

1. Treaties. I. Title.

KZ1301.A93 2013

341'.1 – dc23 2013012198

ISBN 978-1-107-02384-0 Hardback

ISBN 978-1-107-68590-1 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-02384-0 - Modern Treaty Law and Practice: Third Edition

Anthony Aust

Frontmatter

[More information](#)

---

For Kirsten Kaarre Jensen

Cambridge University Press

978-1-107-02384-0 - Modern Treaty Law and Practice: Third Edition

Anthony Aust

Frontmatter

[More information](#)

---

## CONTENTS

<i>Foreword to the first edition by Sir Arthur Watts</i>	page xx
<i>Preface to the third edition</i>	xxii
<i>Articles of the Convention cited in the text</i>	xxiv
<i>Table of treaties</i>	xxviii
<i>Table of MOUs</i>	xl
<i>Table of cases</i>	xlii
<i>Glossary of legal terms</i>	xlvi
<i>List of abbreviations</i>	xlviii
<b>Introduction</b>	1
How to use this book	3
The footnotes and references	4
Emphasis	4
Errors, omissions, comments and material	4
<b>1 Vienna Convention on the Law of Treaties 1969</b>	5
Flexibility of the Convention	6
Scope of the Convention	6
Treaties with or between other subjects of international law	7
International organisations	7
Oral agreements	7
No retrospective effect	8
State succession, state responsibility and the outbreak of hostilities	8
Bilateral and multilateral treaties	9
The Convention and customary international law	9
To what extent does the Convention express rules of customary international law?	10
Effect of emerging customary law on prior treaty rights and obligations	11
Reference material on the Convention	12
<b>2 What is a treaty?</b>	14
Definition of 'treaty'	14
'an international agreement'	14

‘concluded between states’	15
‘in written form’	16
‘governed by international law’	17
‘whether embodied in a single instrument or in two or more related instruments’	19
‘whatever its particular designation’	20
A treaty does <i>not</i> have to be signed	20
Memorandum of understanding	21
Exchange of notes	23
Protocol	23
Optional protocol	23
Less usual treaty names	24
Colloquial names	25
Treaties between states governed by, or referring to, domestic law	26
<i>Pactum de contrahendo</i>	26
<i>Modus vivendi</i>	27
<b>3 MOUs</b>	<b>28</b>
Distinguishing between a treaty and an MOU	29
Evidence of an intention to conclude (or not conclude) a treaty	29
Terminology and form	30
Content	32
Express provisions as to non-legally binding status	32
Circumstances in which the instrument was concluded	33
Registration and non-registration	34
Disagreement as to status	34
The practice of states	35
Commonwealth states	36
European Union states	36
The United States	37
How and why states use MOUs rather than treaties	40
Confidentiality	40
Lack of formality	42
Amendment	43
Termination	43
Dispute settlement	44
Interpretation	44
Agreements with non-states	44
Dangers in using MOUs	44
Respect for MOUs may be seen as less important than for treaties	45
Possible lack of care in drafting	45
Lack of implementing legislation	46
Difficulty in finding MOUs	46
The legal status of MOUs	46
Are MOUs really treaties?	46



## CONTENTS

ix

Are MOUs 'soft law'?	49
The possible international legal consequences of MOUs: estoppel	50
MOUs in domestic courts	52
Conclusion	53
<b>4 Capacity to conclude treaties</b>	<b>55</b>
Special cases	56
The Cook Islands and Niue	56
Vatican City (the Holy See)	57
Taiwan	57
Palestine	58
Turkish Republic of Northern Cyprus	59
Somaliland	59
Western Sahara	60
Federations (and analogous entities)	60
Belgium	62
Scotland and Northern Ireland	63
Bosnia and Herzegovina, Republika Srpska and the Federal Republic of Yugoslavia	63
Kosovo	64
Hong Kong and Macao Special Administrative Regions	64
Overseas territories	68
Agreements with the parent state or between its overseas territories	70
<b>5 Full powers</b>	<b>71</b>
Credentials	72
Meaning of full powers	72
General rule	73
Bilateral treaties	73
Multilateral treaties	73
When full powers are never required	74
General full powers	75
Procedure	75
Sending full powers by telegram, fax or e-mail	77
Proxy signature	77
Invalid acts	78
<b>6 Adoption and authentication</b>	<b>79</b>
Adoption	79
Bilateral treaties	79
Treaties adopted at international conferences	80
Consensus	80

Authentication	83
Bilateral treaties	83
Multilateral treaties	83
Treaties adopted within an international organisation	84
Final act	85
When is a treaty 'concluded'?	86
<b>7 Consent to be bound</b>	<b>87</b>
Participation in a treaty	87
Signature	89
'Open for signature'	90
Signature <i>ad referendum</i>	90
Place of signature	91
Doubt about signature	92
Initialling	92
The Dayton Agreement	93
Witnessing	93
Exchange of instruments constituting a treaty	94
Ratification	95
Exchange or deposit of instruments of ratification	96
Conditional ratification?	97
No obligation to ratify	98
Period for ratification	98
Ratification of part of a treaty	98
Instrument of ratification	98
Who can sign?	98
Form and content of an instrument of ratification	99
Place of deposit of instruments	100
Acknowledgement and date of deposit	100
Acceptance or approval	100
Provisional or definitive application	101
Accession	101
Preconditions for accession	102
Any other agreed means	104
'Signatory', 'party', 'signed-up to' and 'adherence'	104
The 'all states' and 'Vienna' formulas	105
Rights and obligations prior to entry into force	106
Obligation not to defeat the object and purpose of a treaty prior to its entry into force (Article 18)	107
Withdrawal of consent to be bound before entry into force	109
Withdrawal and re-ratification?	110
Unratified treaties	110
Development of treaties	110
Framework treaties	111
Measures	111
International tribunals	113

## CONTENTS

xi

<b>8 Reservations</b>	114
Interpretative declarations	115
Political declarations	117
Disguised reservations	117
Reservations	118
Bilateral treaties	119
Multilateral treaties	120
Reservations generally <i>not</i> prohibited	121
Exception (a): the reservation is prohibited by the treaty	121
Exception (b): the treaty provides that only specified reservations may be made	122
Exception (c): exceptions (a) and (b) do not apply, and the reservation is incompatible with the object and purpose of the treaty (compatibility test)	123
Acceptance of, and objection to, reservations	125
Plurilateral treaties	125
Constituent instrument of an international organisation	126
All other cases	126
The law before the Convention	126
The rules of the Convention	127
The legal effect of reservations and objections to reservations	128
Some unresolved issues	129
Reservations to human rights treaties	131
Treaty-monitoring bodies	134
Some ways of minimising the problem of reservations	135
Procedure	137
Reservations	137
Objections to reservations	138
Withdrawal of reservations and of objections to reservations	139
Functions of the depositary in relation to reservations	139
Treaties with provisions on reservations	140
Treaties silent as to reservations	141
Late reservations	141
Can a reservation be made on 're-accession'?	142
The International Law Commission study on reservations	143
<b>9 Entry into force</b>	145
Express provisions	145
No provision or agreement on entry into force	150
Date of entry into force	150
Ratification after the treaty has entered into force	151
Who determines the date of entry into force?	152
Time of entry into force	152
Date from which the treaty speaks	153
Effect of withdrawal of an instrument or extinction of a state	153
Reservations attached to instruments	153
Provisional application	154

Preparatory commissions	156
Retroactive effect of a treaty	157
Revival of a treaty	158
<b>10 Treaties and domestic law</b>	<b>159</b>
Duty to perform treaties	160
Constitutional provisions	162
Monism	163
France	163
Germany	164
The Netherlands	164
Poland	165
Russia	165
Switzerland	166
Dualism	167
UK constitutional practice	168
Scotland and Northern Ireland	171
Interpretation and application of treaties by UK courts	172
EU law and the United Kingdom	173
Other dualist states	173
Is one approach better?	174
The United States	174
Treaties as the law of the land	175
Hierarchy of norms	176
Interpretation of treaties by US courts	176
Implementation by states of the United States	177
<b>11 Territorial application</b>	<b>178</b>
Territorial extension clauses	179
Bilateral treaties	179
Multilateral treaties	180
Transfer of an overseas territory	182
Declaration on signature or ratification	182
The Crown Dependencies of the Isle of Man and the Channel Islands	185
Application of a treaty to an overseas territory alone	186
Objections to territorial extensions	186
Political subdivisions of metropolitan territory	187
Territorial clauses	188
Federal clauses	188
Federal reservations or statements	189
Hong Kong and Macau Special Administrative Regions	190
<b>12 Successive treaties</b>	<b>192</b>
Bilateral treaties	193
Multilateral treaties	193

## CONTENTS

xiii

Express provisions	194
The treaty prevails over all other treaties, past and future	195
The treaty is subordinate to an earlier one	196
The parties shall not enter into later inconsistent treaties	196
An existing treaty shall not be affected	197
For parties to the treaty it prevails over earlier treaties	199
Compatible supplementary treaties are permitted	200
Comprehensive provisions	201
The best of both worlds	201
Neutral provisions	202
The residual rules of Article 30	202
<b>13 Interpretation</b>	<b>205</b>
Article 31: general rule of interpretation	207
Article 32: supplementary means of interpretation	208
Article 31	208
Paragraph (1): basic rule	208
Paragraph (2): context	209
Paragraph (3): subsequent agreements and practice	212
Subsequent agreement	212
Subsequent practice	214
Relevant rules of international law	216
Special meaning	217
Article 32: supplementary means of interpretation	217
Other supplementary means of interpretation	220
Implied terms	221
Interpretation of treaties in more than one language	222
Article 33	225
<b>14 Third states</b>	<b>227</b>
General rule	227
Treaties providing for obligations for third states	228
Treaties providing for rights for third states	228
<i>Erga omnes</i> status or regime	228
Revocation or modification of obligations or rights of third states	230
Rules in a treaty becoming binding on third states through international custom	230
Third state nationals and some others	231
<b>15 Amendment</b>	<b>232</b>
Bilateral treaties	234
Multilateral treaties	235
Automatically and comprehensively binding amendment mechanisms	235
Deemed acceptance of amendment	239
The percentage problem	239
No effective amendment procedure	240

Review clauses	240
Residual rules	241
Proposal to amend a treaty as between all the parties	241
Supplementary treaties	242
Agreement to modify a multilateral treaty between certain parties only	242
Amendment before entry into force	243
<b>16 Duration and termination</b>	<b>245</b>
Express provisions	246
Indefinite duration with right to terminate	246
Duration for a fixed period with possibility of extension	248
Indefinite duration with conditional right to withdraw	249
Duration until a specific event	250
Duration for a specified period of years with no provision for extension or withdrawal	250
Extension of treaties	250
Comprehensive clauses	251
Differing termination formulas	252
Duration for an indefinite period with no withdrawal clause	253
Transitional provisions	253
Termination or withdrawal by consent	254
Reduction of parties below the number necessary for entry into force	255
No provision for termination or withdrawal	255
Termination or suspension by conclusion of a later treaty	257
Termination or suspension for breach	258
Bilateral treaties	259
Multilateral treaties	259
Material breach	260
Fundamental breach	261
Supervening impossibility of performance	261
Fundamental change of circumstances ( <i>rebus sic stantibus</i> )	262
Paragraph 1	262
Paragraph 2	264
Paragraph 3	264
Procedure	264
Article 66	265
Instruments for termination, withdrawal or suspension	265
Consequences of termination, withdrawal or suspension	266
Miscellaneous	267
Obligations imposed by international law independently of a treaty	267
Separability of treaty provisions	267
Loss of rights by acquiescence	268
Can one validly withdraw from a treaty and then accede to it?	268
Other grounds for termination	269
By implication	269

## CONTENTS

xv

Execution	269
Desuetude (disuse) or obsolescence	270
Extinction of the international legal personality of a party	270
Severance of diplomatic or consular relations	270
Outbreak of hostilities	271
<b>17 Invalidation</b>	<b>273</b>
Violation of internal law on competence to conclude treaties	273
Violation of specific restrictions on authority to express consent	275
Error	275
Fraud	276
Corruption	277
Coercion of a representative of a state (duress)	277
Coercion of a state by the threat or use of force	277
Peace treaties	278
Conflict with a peremptory norm of general international law ( <i>jus cogens</i> )	278
Unequal treaties	280
Consequences of invalidity (other than for <i>jus cogens</i> )	280
Procedure	281
General points	281
Separability of treaty provisions	282
Loss of rights by acquiescence	282
<b>18 The depositary</b>	<b>283</b>
Bilateral treaties	283
Designation of the depositary for a multilateral treaty	283
One or more states as depositary	284
An international organisation as depositary	286
The UN Secretary-General as depositary	286
Duty to act impartially	287
Functions of the depositary	289
Notifications and communications	291
The depositary as a state	292
Correction of errors	293
Administrative functions	295
<b>19 Registration and publication</b>	<b>297</b>
Registration	297
Registration regulations and procedure	298
Associated documents	300
Joint registration	301
Legal effect of registration or non-registration and disputes	301
Publication	303
Publication by the United Nations	304

Publication by states	305
Other sources of treaty texts	306
Treaty indexes	306
<b>20 Dispute settlement and remedies</b>	<b>308</b>
Voluntary settlement	308
Negotiations and consultations	308
Involvement of third parties	309
Conciliation	310
Compulsory binding settlement	310
Arbitration	310
Judicial settlement	313
Failure to provide for a compulsory dispute settlement mechanism	315
Remedies	315
Countermeasures	316
Objects and limits of countermeasures	318
Proportionality	318
Procedural conditions	318
Sacrosanct obligations	319
<b>21 Succession to treaties</b>	<b>320</b>
Vienna Convention on Succession of States in respect of Treaties 1978	321
Customary law principles	322
Former colonies and other overseas territories	324
The two German states	326
The former Soviet Union	327
Russia	327
Former Soviet republics	327
The Baltic states	329
Former Yugoslav republics	329
Bosnia and Herzegovina, Croatia, Macedonia and Slovenia	330
The Federal Republic of Yugoslavia (Serbia and Montenegro)	330
Former Czechoslovakia	332
Multilateral treaties: role of the depositary	334
‘Yugoslavia’	334
Date of succession	335
Domestic implications of treaty succession	335
Hong Kong and Macau	336
Continued application of treaties	336
Multilateral treaties	337
Bilateral treaties with third states	339
Legal effect of the arrangements for third states	340



## CONTENTS

xvii

<b>22</b>	<b>International Organisations</b>	<b>341</b>
	Establishment by treaty	342
	Interpretation of the constituent instrument	343
	Membership	344
	International legal personality	346
	Treaties between states and international organisations or between international organisations: the 1986 Convention	346
	Negotiation of multilateral treaties	349
	Treaties adopted within an international organisation	349
	UN Sixth Committee	350
	UN International Law Commission	351
	UN specialised agencies	351
	Regional international organisations	352
	Authentication of treaties adopted within an international organisation	352
	Responsibility for the acts of an international organisation	352
	Dispute settlement	353
	United Nations	354
	UN specialised agencies	355
	Staff disputes	355
	Human rights treaty-monitoring bodies	355
	Special cases	357
	The European Union	359
	What's in a name?	359
	Capacity of the Union to conclude treaties	360
<b>23</b>	<b>Drafting and final clauses</b>	<b>363</b>
	Title	363
	Name	364
	Purpose	364
	Preamble	366
	Bilateral treaties	366
	Multilateral treaties	366
	Preambular paragraphs	367
	MOUs	369
	Main text of treaties	369
	Layout	370
	Headings	370
	Numbering	371
	Paragraph numbering	371
	Cross-references	372
	Footnotes	372
	MOUs	372
	Terminology	373
	Privileges and immunities	373

Table of contents	374
Final clauses	374
MOUs	376
Relationship to other treaties	376
Settlement of disputes	376
Amendment and revision	376
Status of annexes	377
Signature	377
Ratification	378
Accession	378
Entry into force	379
Duration and denunciation, withdrawal or termination	379
Provisional application	379
Territorial application	379
Reservations	379
Depositary	380
Registration	380
Authentic texts	381
<i>Testimonium</i>	381
Bilateral treaties	382
MOUs	383
Attachments	383
Exchanges of notes	384
MOUs	385
Procedure	386
Drafting techniques	387
How to begin	388
Style	388
Numbering	388
Languages	388
Amendment/consolidation	389
Substance	389
Presenting the draft	390
<b>Appendices</b>	
A <i>Vienna Convention on the Law of Treaties</i>	391
B <i>Single instrument treaty</i>	419
C <i>Single instrument MOU</i>	421
D <i>Model single instrument MOU</i>	423
E <i>Treaty constituted by an exchange of notes</i>	425
F <i>Model exchange of notes recording an understanding</i>	428
G <i>Treaty and MOU terminology: comparative table</i>	429
H <i>Credentials</i>	430

## CONTENTS

xix

<i>I Full powers</i>	431
<i>J General full powers for permanent representative to the United Nations</i>	432
<i>K Final Act of the Vienna Conference</i>	433
<i>L Instrument of ratification</i>	439
<i>M Certificate of exchange of instruments of ratification</i>	440
<i>N Model exchange of notes correcting an error in an exchange of notes</i>	441
<i>O Procès-verbal of rectification</i>	442
<i>P UN registration regulations</i>	443
<i>Q Overseas territories</i>	448
<i>Index</i>	450

## FOREWORD TO THE FIRST EDITION

The law of treaties is one of the branches of international law whose roots go back furthest in time. With the emergence of political communities came the need for them to deal with each other, to settle questions in dispute without having to go to war, to arrange the consequences of success or failure after a war had been fought, to strike alliances, organise matters of trade, settle territorial limits to their power, and so on. For such matters they needed from early times some accepted rules covering two matters: the sending of envoys and the making of agreements. Both have remained central to the conduct of what we now call international relations.

Over centuries, the rules and practices governing those agreements have evolved into the modern law of treaties. The evolutionary process is a continuing one. A book on the law of treaties written at the end of the nineteenth century is recognisably about the same subject as its equivalent written today. Yet, while the general body of the law remains broadly stable, times change and bring with them changes in the law. International organisations have emerged as significant actors in the treaty-making process; multilateral treaties are nowadays concluded more frequently, and have more parties, than used to be the case – a reflection of the enormous increase in the number of states during the course of the present century – and there have been great technological changes, especially in communications, which have noticeably affected the process by which treaties are negotiated and concluded.

The modern law is now authoritatively set out in the Vienna Convention on the Law of Treaties 1969, and in its parallel Convention of 1986 on treaties made by international organisations. They are, however, not only far from a complete code on the subject, they are also not free from continuing controversy even in respect of matters which they do deal with (such as the vexed topic of reservations, which the International Law Commission is presently studying once again, having previously reported on the matter in 1951); moreover, as is so often the way, new issues have arisen which were not envisaged when the principal Vienna Convention of 1969 was concluded. A new book on the law of treaties, surveying the subject some thirty years after the Vienna Convention was concluded, is timely.

What, however, makes the present volume particularly welcome is its manifest concern with the practical aspects of the law of treaties. Undoubtedly the law of treaties exercises a great intellectual fascination. Many issues directly or indirectly raise large questions of legal theory. Furthermore, some treaties are of enormous

historical significance, like the Peace of Westphalia of 1698 and the Treaty of Rome of 1957. But it must always be recalled that treaties are essentially instruments for regulating by agreement the myriad day-to-day affairs of states. International travel and broadcasting, international posts and telecommunications, international trade – these and many other matters, which are usually taken for granted, are dependent upon a network of often very detailed treaties, both bilateral and multilateral.

For this array of treaties – essential for the conduct of international relations, but seldom eye-catching – the negotiating process is well established. So too are most of the relevant legal rules. But however well developed international rules and processes may be, they have a practical dimension to which much less attention is usually paid. This is doubly unfortunate. The true significance of many rules is illuminated by being seen in the perspective of their application in practice, while the steps which need to be taken in applying the rules can be as important as the rules themselves, going far to explain why many things are as they are.

It is the great virtue of this volume that in looking at the law *and* its practical context, it grounds the treatment of the law of treaties firmly in the real world of international relations, foreign ministries and diplomacy. That is the world about which Anthony Aust is exceptionally well qualified to write. As one of the former senior legal advisers in the Foreign and Commonwealth Office,<sup>1</sup> who has served not only in London but also in diplomatic posts abroad (including as Legal Adviser to the United Kingdom Mission to the United Nations in New York from 1988 to 1991), he brings to this book a wealth of experience on all aspects of treaty law and practice. That experience, and the insights which flow from it, pervade every chapter.

Everyone concerned with treaties and the law relating to them, whether on a day-to-day basis, occasional practitioners in the field or as outside observers of the treaty process, will benefit greatly from Anthony Aust's up-to-date and practical treatment of the subject. I warmly commend this volume, which is a welcome addition to the literature in this field.

Sir Arthur Watts KCMG QC  
London, January 1999

<sup>1</sup> He retired as Deputy Legal Adviser in 2002.

## PREFACE TO THE THIRD EDITION

I am, in plainer words, a bundle of prejudices – made up of likings and dislikings.

Charles Lamb, *Essays of Elia* (1823), 'Imperfect Sympathies'

A first edition of this book was written and published when I was still employed by the British Diplomatic Service. Although I was generally allowed to express my own views, being still a public servant I had sometimes to exercise restraint. Since retiring in 2002, I have been free to say and write what I like. Although I hope I am no more prejudiced than anyone else, in this edition I can give more of my personal views. Identifying them is a simple matter; merely compare what I said in the first or second edition with what I say now.

Although this edition may look much like the first or second, since it follows its general form and layout, every page has changes, some substantial; and even a few corrections. A lot of the material has been updated. Some arguments have been refined, for example, I have learned a lot from Daniel Hollis about the legal rationale for memorandums of understanding (MOUs). New material has been added. Given its increasing importance for treaties, there is an attempt to explain the sometimes baffling role in treaty making played by the European Union. Even some of the quotations are new. A bibliography has been omitted.

In response to popular request, the treaties, MOUs and cases list the pages where each instrument or decision is referred to. They are also listed using the name by which they are more commonly known, thereby making them that bit easier to find. Knowing how most people work today, whenever possible a reference to an online source is given, whether it be the registration number of a treaty published in the UNTS, ILM or a website.

Unless otherwise indicated, all views expressed in this book are my own. But, for this edition, various people have provided valuable facts and material, Duncan Hollis in particular, and also James Ding. I am sorry if I have omitted anyone who should be mentioned.

No lawyer can work effectively without a well-run library. I therefore wish to thank the staff of the FCO Legal Library, as well as of the Library of the Institute of Advanced Legal Studies, London. I also owe a big debt to Nevil Hagon and his colleagues in the FCO Treaty Section, and Arancha Hinojal of the United Nations Treaty Section for

helping me with information, finding material, and for reading and commenting on drafts on the practical aspects of treaties.

My thanks also go to Sinead Moloney of Cambridge University Press, and Judy Oliver for compiling the index.

I must again express my appreciation to the following for giving permission to reproduce certain of the Appendices: A, B and E (the Controller of the Her Majesty's Stationary Office); C (the Austrian and British Ministries of Defence); H, I and L (the Foreign and Commonwealth Office); and K and P (the United Nations).

ARTICLES OF THE CONVENTION CITED IN  
 THE TEXT

<i>Article</i>	<i>Page</i>
1	6
2	373
(1)(a)	7, 14, 29–30, 161, 349
(b)	95, 99
(c)	72–3, 75
(d)	117, 118–19
(e)	79, 141, 288
(f)	87, 288
(g)	55, 87, 96, 145, 388
(h)	227
(i)	341
3	231
(a)	106
(b)	347
(c)	7, 347–8
4	8, 86, 139, 277–8, 279, 343
5	7, 84, 138, 202, 342–3, 347, 349–50
6	55
7	78, 142
(1)	6, 73
(2)	74–5, 78
8	78
9	79, 80, 349–50
10	79, 83, 85
11	88, 104, 125
12	79, 89, 91, 92, 125
13	94
14	79, 96
15	79
16	96–7, 292
17	98
18	87, 107–9, 110, 160
19	120–5, 128–30, 135–6, 139, 141
20	120–1, 128–30, 135–6



## ARTICLES OF THE CONVENTION

XXV

(1)	125, 138
(2)	125
(3)	125, 126, 344
(4)	127–8, 140
(5)	128, 137, 138, 139, 140, 141, 292
21	120–1, 128–30, 135–6, 137
22	120–1, 139, 317
23	120–1, 128–30, 137, 138–9
24	292
(1)	145
(2)	150
(3)	151
(4)	106–7, 145, 157
25	79, 125, 154
26	87, 160–1, 208
27	125, 132–3, 161, 275
28	157, 193–4
29	102, 179, 183
30	86, 194, 196, 202–4, 258
(1)	196
(3)	192, 195
(4)	199, 242
(5)	242
31	8, 10, 116, 131, 172, 205–6, 207–17, 225, 343, 349
(1)	218, 355–6
(2)	44, 53, 116, 209–12, 368
(3)	44, 53, 128–30, 221, 233
(4)	217
32	10, 116, 131, 172, 205–6, 207, 217–22, 225, 343
33	172, 208–9, 225–6, 343
34	227, 230
35	228, 230
36	228, 229, 230, 254
37	140, 230
38	229, 230–1
39	233–4, 240
40	9, 202, 241, 342–3
41	9, 193, 203, 242, 255
42	160–1, 245, 269, 281
43	267
44	196, 282
(1)	267–8
(2)	267–8
(3)	267–8

xxvi	ARTICLES OF THE CONVENTION
(4)	267–8, 276, 277
(5)	267–8, 277–8, 279
45	265, 268, 282
(b)	263
46	268, 273–5, 282
47	78, 268, 275, 282
48	268, 276, 282, 293
49	268, 276, 282, 317, 318
50	268, 277, 282, 319
51	277, 282, 318
52	10–11, 116, 277–8, 282, 318–19
53	279, 281, 282, 319
54	246, 254
55	255
56	345
(1)(a)	255–6, 257
(b)	257
(2)	11, 255–6
58	9, 193, 255
59	86, 192, 193, 202, 203–4, 258
60	9, 10, 11, 161, 203–4, 258–60, 268, 349
61	258–9, 264, 267
(1)	261–2
(2)	262
62	10–11, 256, 258–9, 262–3, 268, 349
63	270
64	279, 281
65	245, 259, 264–6, 281, 282
66	139, 245, 259, 264, 265, 281, 282
67	72, 245, 259, 264, 265–6, 282
68	245, 259, 266, 282
69	280–1
70	266
71	279
72	267
73	8, 271, 281, 315–16, 320
74	270–1
75	278
76	79, 284, 287
77	380
(1)	289–91, 292, 380
(2)	289, 290–1
78	290, 291–2
79	276, 293–5
80	291, 298, 301, 378

## ARTICLES OF THE CONVENTION

xxvii

81	90, 101, 106
83	90
84	101–2, 146, 150–1, 152
85	225, 380
Annex	310, 383–4

## TABLE OF TREATIES

*Where appropriate, a treaty is listed under either the name or acronym by which it is most commonly known, or the subject matter is mentioned first.*

AJIL	<i>American Journal of International Law</i>
ATS	<i>Australian Treaty Series</i>
CoE	Council of Europe
CTS	<i>Consolidated Treaty Series</i>
EHRH	European Human Rights Reports
ETS/CETS	<i>European Treaty Series / Council of Europe Treaty Series</i>
<i>Hertslet</i>	<i>Hertslet's Commercial Treaties</i>
ILM	<i>International Legal Materials</i>
ILR	<i>International Law Reports</i>
LNTS	<i>League of Nations Treaty Series</i>
TIAS	<i>Treaties and Other International Acts Series</i> (United States)
OJ	<i>Official Journal of the European Community/Union</i>
UKTS	<i>United Kingdom Treaty Series</i>
UNTS	<i>United Nations Treaty Series</i>

### Multilateral treaties

- AETR II Agreement 1970 (993 UNTS 143 (No. 14533)) 131, 136
- Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions 1958 (335 UNTS 211 (No. 4789)) 364–5
- Agreement on Succession 2001 (2262 UNTS 253 (No. 40296); ILM (2002) 1) 94, 332, 335
- Albatross Agreement 2001 (UKTS (2004) 38; (2004) ATS 85) 199
- Algiers Accords 1981 (ILM (1981) 223; (1981) *AJIL* 418; [www.iusct.org](http://www.iusct.org); 62 *ILR* 595) 19
- American Convention on Human Rights (1144 UNTS 144 (No. 17955); ILM (1970) 673; UKTS (1980) 58) 355
- Antarctic Marine Living Resources Conservation Convention 1980 (CCAMLR) (402 UNTS 71 (No. 22301); ILM (1980) 837; UKTS (1982) 48; TIAS 10240) 102, 112, 113, 179, 198, 211, 289, 329, 358, 360–1
- Antarctic Treaty 1959 (402 UNTS 71 (No. 5778); UKTS (1961) 97; [www.ats.aq](http://www.ats.aq)) 81–2, 112, 113, 125, 155–6, 178, 198, 214, 228–9, 242, 358

## TABLE OF TREATIES

xxix

- Antarctic Treaty Environmental Protocol 1991 (ILM (1991) 1460; UKTS (1996) 6; 1998 ATS 6; www.ats.aq) 102, 155–6, 178, 198
- Austrian State Treaty 1955 (217 UNTS 223 (No. 2249); UKTS (1957) 58; TIAS 3298) 270, 322–3
- Belgrade Convention 1948 (33 UNTS 181 (No. 518)) 195–6
- Bonn Convention on the Conservation of Migratory Species of Wild Animals 1979 (1980 ILM 15; UKTS (1990) 87) 22, 122–3
- Bribery Convention 1997 (ILM (1998) 1) 148
- Cambodia Agreement 1991 (ILM (1992) 1820) 286
- CCAMLR (see Antarctic Marine Living Resources Conservation Convention, above)
- CEDAW Convention 1979 (Elimination of all Forms of Discrimination Against Women) (1249 UNTS 13 (No. 20378); ILM (1980) 33; UKTS (1989) 2) 131, 133–4, 240, 356–7
- CERD Convention 1965 (Elimination of All Forms of Racial Discrimination) (669 UNTS 195 (No. 9464); UKTS (1967) 77) 86, 131, 135–6, 189–90, 356–7
- CFE (Conventional Armed Forces in Europe) Treaty 1990 (ILM (1991) 1; UKTS (1993) 44) 23, 357, 389
- Chemical Weapons Convention 1993 (CWC) (1974 UNTS 317 (No. 33757); ILM (1993) 804; UKTS (1997) 45) 105, 118, 137, 161, 207, 237, 249, 260, 365, 369–70, 373, 374, 377, 381
- Chicago Convention 1944 (15 UNTS 295 (No. 102); UKTS (1953) 8) 25, 41, 112–13, 146–7, 215, 298, 342
- Chicago Convention (Article 3*bis*) 1984 (ILM (1984) 705; UKTS (1999) 68) 82, 154–5, 219, 274
- CITES Convention (International Trade in Endangered Species) 1973 (993 UNTS 243 (No. 14537); ILM (1973) 1085; UKTS (1976) 101; 27 UST 1087; TIAS 82249) 194, 233
- Civil LORAN C Navigation System Agreement 1992 (1774 UNTS 476 (No. 30919)) 247–8
- Climate Change Convention 1992 (1771 UNTS 107 (No. 30822); ILM (1992) 851; UKTS (1995) 28) 106, 331, 367, 375
- CoE Archaeological Heritage Convention 1992 (ETS 143) 238
- CoE Criminal Law Corruption Convention (ILM (1999) 505; ETS 173) 102
- CoE Extradition Convention 1957 (359 UNTS 273 (No. 5146); UKTS (1991) 97) 170, 178, 182, 197
- CoE Human Rights and Biomedicine Convention 1997 (ETS (1997) 164) 88
- CoE Insider Trading Convention 1989 (ETS (1989) 130; UKTS (1998) 7) 88
- CoE Military Obligations in Cases of Multiple Nationality Convention 1963 (634 UNTS 222 (No. 9065); UKTS (1971) 88; ETS 43) 122–3, 142
- CoE Mutual Administrative Assistance in Tax Matters Convention 1988 (ETS (1988) 127) 88
- CoE National Minorities Protection Framework Convention 1995 (ILM (1995) 353; UKTS (1998) 42; ETS 157) 102, 151
- CoE Nationality Convention 1997 (2135 UNTS 189 (No. 37248); ILM (1998) 44; CETS 166) 123
- CoE Peaceful Settlement of Disputes Convention 1957 311–12
- CoE Pharmacopoeia Convention 1964 (ETS (1968) 50; UKTS (1974) 32) 88
- CoE Regional or Minority Languages Charter 1992 (2044 UNTS 577 (No. 35358); ETS 148) 122–3
- CoE State Immunity Convention 1972 (1495 UNTS 182 (No. 25699); ILM (1972) 470; UKTS (1979) 74) 169
- CoE Transfrontier Television Convention 1989 (2206 UNTS 312 (No. 33611); ILM (1989) 862; ETS 132; UKTS (1993) 22); amended by a 1998 Protocol (ETS 171) 123, 149–50, 207
- Commonwealth of Independent States (CIS) Charter 1993 (ILM (1995) 1279) 20
- Compliance Agreement 1993 (2221 UNTS 120 (No. 39486); ILM (1994) 968) 21, 136, 147, 236–7, 239–40, 368, 380–1

- Comprehensive Nuclear-Test-Ban Treaty 1996 (CTBT) (ILM (1996) 1443) 21, 24, 82, 104, 137, 147, 157, 205–6, 210, 220, 221, 237–8, 288, 293–4, 296, 365, 369–70, 374, 383
- Contracts for the International Sale of Goods Convention 1980 (1489 UNTS 3 (No. 25567); ILM (1980) 671) 188
- Constantinople Convention 1888 (171 CTS 241) 228–9, 298
- Covenant of the League of Nations, 297
- Conventional Weapons Convention 1980 (1342 UNTS 137 (No. 22495); ILM (1980) 1523; UKTS (1996) 105) 98
- Customs Treatment of Pool Containers Convention 1994 (2000 UNTS 289 (No. 34301); UKTS (2004) 13) 239, 289, 291
- Danube Convention (see Belgrade Convention, above)
- Dayton Agreement 1995 (ILM (1996) 75) 25, 63, 92, 93, 94, 149, 212, 226, 365
- Death of Missing Persons Convention 1950 (119 UNTS 99 (No. 1610); 258 UNTS 392 (No. 1610); 588 UNTS 290 (No. 1610)) 250
- Disabilities Convention 2006 (see UN Convention (A/RES/61/106) below) 372
- e-Asian Framework Agreement 2000 (ILM (2001) 516) 222
- Energy Charter Treaty 1994 (2080 UNTS 100 (No. 36116); ILM (1995) 373; UKTS (2000) 78) 154–5, 199, 201–2
- ENMOD Convention 1976 (1108 UNTS 151 (No. 17119); ILM (1977) 16; TIAS 9614) 211
- Espoo Convention 1991 (1989 UNTS 309 (No. 34028); ILM (1991) 802) 183, 189–90
- Estonia* Agreement 1995 (1890 UNTS 176 (No. 32189); Additional Protocol 1996 1947 UNTS 404 (No. 32189); UKTS (1999) 74) 15, 103, 223, 284
- EU Mutual Assistance in Criminal Matters Convention 2000 (OJ 2000 No. C 197/3) 147, 149
- Eumetsat Convention 1983 (UKTS (1990) 32) 240
- Eurocontrol Convention 1980 and 1997 Protocol, 224, 389
- European Convention on Human Rights 1950 (213 UNTS 221 (No. 2889); UKTS (1953) 71; ETS 5) 88, 118–19, 130–1, 134, 145–6, 159, 170–1, 174, 178–9, 220, 248, 266, 343, 352
- European Space Agency (ESA) Convention 1975 (ESA) (1297 UNTS 161 (No. 21524); ILM (1975) 864; UKTS (1981) 30) 226, 240, 251–2, 253–4, 266, 374
- European Synchrotron Radiation Facility Convention 1988 ([www.esrf.eu](http://www.esrf.eu)) 247, 254
- Europol Convention 1995 (2156 UNTS 200 (No. 37663); UKTS (2000) 103) 145–6
- Financial Support of the North Atlantic Ice Patrol Agreement 1956 (256 UNTS 171 (No. 3627); UKTS (1956) 43; TIAS 3597) 269
- Fish Stocks Agreement 1995 (2167 UNTS 3 (No. 37924); ILM (1995) 1542; UKTS (2004) 19) 109–10, 121–2, 184–5, 196, 361, 364, 381
- Food Aid Convention 1999 (2073 UNTS 138 (No. 32022)) 103, 250
- Framework Agreement concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry 2000 (2184 UNTS 5 (No. 38494); UKTS (2001) 33) 238–9
- General Act for the Pacific Settlement of International Disputes 1928 (93 LNTS 343; UKTS (1931) 32 and 71) and the Revised General Act 1949 (71 UNTS 101 (No. 912)) 122, 311–12
- General Agreement on Tariffs and Trade 1947 (GATT) (55 UNTS 171 (No. 814 (b)); 55 UNTS 308 (No. 814 I(c))); Protocol of Provisional Application (55 UNTS 194) 154, 156–7
- Geneva Conventions 1949 (75 UNTS 3 (Nos 970–3); UKTS (1958) 39) 58, 90, 146, 169, 222, 255–6, 260, 262, 267, 271, 358