

## SUMMARY

**Ana Polak Petrič, Irena Jager Agius, Andraž Zidar, editors**

### **THE LAW OF TREATIES:**

#### **Handbook, Articles and Documents**

Publication of the book *The Law of Treaties: Handbook, Articles and Documents* was inspired by the need for a reference work for those involved in the conclusion of treaties and other international instruments. The objective is to make this publication a manual for the law of treaties in Slovenia. It is all-embracing and therefore of interest to state officials and diplomats, jurists in corporations and counsels working in international law, lecturers, undergraduate and post-graduate students of international law and international relations, as well as those whose work concerns this particular international legal field.

In the preface, Minister of Foreign Affairs **Karl Erjavec** describes the volume as an extraordinary and noteworthy achievement, even at the international level. He expresses his satisfaction that the ministry staff and other contributors found the drive and passion to prepare this publication, which is a significant contribution to the development of international law in Slovenia. He emphasises that treaties are one of the main sources of international law and stability in international relations. Therefore, they are inextricably linked with the activities of the Ministry of Foreign Affairs.

In the foreword, **Ernest Petrič**, member of the UN International Law Commission and judge of the Constitutional Court of the Republic of Slovenia, underlines that international law – with treaties being its most quintessential part – is, if not the only, certainly one of the most important foreign policy tools for countries like Slovenia that lack major political, economic and financial capacities. This publication is therefore a great contribution to an effective Slovenian foreign policy. For those dealing with the nuts and bolts of foreign policy, understanding the issue of treaties in the broadest possible sense is a *conditio sine qua non* for successful work.

**Borut Mahnič**, Ambassador and Director General at the Ministry of Foreign Affairs stresses in the introduction that the formation of the appropriate legal groundwork proved essential for establishing and developing contacts and relations in the international community, particularly during the early years after Slovenia's independence. After more than two decades of practice, the moment is ripe to publish a volume that summarises the progress made and the experience acquired thus far. In this sense, the publication with its handbook and articles are of exceptional importance in both theory and practice, not only for the conclusion of treaties, but for a young country's diplomacy in general. He also notes that international law has been shaped and developed through practice, to which international legal experts make an important contribution.

In the introductory contribution, **Andraž Zidar**, the editor-in-chief of the International Law Series, considers the publication a comprehensive compilation of experience and knowledge of the conclusion and application of treaties in the Slovenian legal sphere. Because national practice, co-shaped by legal advisers, has a dominant influence on the evolution of the law of treaties, emphasis is placed on the applicability of the acquired knowledge. All the contributing authors provided, or continue to provide, legal advice for the Ministry of Foreign Affairs, where most active international legal experts are employed. Apart from the practical dimension, special attention is given to insights into the doctrine. The authors base their contributions on findings from major theoretical works, reinforcing them with their own ideas. Through a combination of theory and practice, they provide an important contribution to knowledge of international law in Slovenia. The domestic international legal experts have thus succeeded emulating the tradition of some countries, in which legal advisers take on a leading role in creating international legal practice and doctrine.

### **Irena Jager Agius: The Procedure for Concluding Treaties and Other International Instruments – A Handbook**

The Handbook is the main contribution explaining – on the basis of the long-standing practice of the Ministry of Foreign Affairs – the procedure employed in concluding treaties as provided for by the legal framework of the Republic of Slovenia and the Vienna Convention on the Law of Treaties. The legally binding or non-legally binding nature of an international instrument must be apparent from its very contents. According to the principle of *pacta sunt servanda*, the subjects must respect and fulfil the commitments assumed, while determining their own manner in which international commitments are integrated into domestic law. The main focus of the Handbook is on the internal legal procedure for concluding treaties. The separate stages of this procedure on the one hand and international non-legally binding instruments on the other are addressed in detail and presented in the context of key international legal stages. The appendices to the Handbook are also valuable. They include a flow chart of all procedures required to conclude international instruments in parallel and in sequence, and examples of material to be prepared at separate stages.

**Simona Drenik: Treaties in the Slovenian Legal Order**

The author presents the demanding topic of the place of treaties in the Slovenian legal order and the significance of treaties for the functioning of the modern state. She first analyses in detail the constitutional and legal framework concerning treaties, underlines the complexity and heterogeneity of the legal issues that arise in this regard and notes the provisions on state borders and human rights, two fundamental elements of modern state sovereignty. The focus then shifts to the place of treaties in the Slovenian legal order (“under the Constitution and above the law”), finally addressing in depth areas of special concern, including the definition of state boundaries, the protection of human rights and succession of states in respect of treaties. In the conclusion, the author stresses that these fields have branched off and seen significant progress in the past fifty years. It comes as no surprise that a discussion has emerged between international legal experts on the fragmentation of international law, its advantages and disadvantages.

**Tjaša Tanko: The Differences between International Legally Binding and Non-Legally Binding Instruments**

The author addresses the criteria for the differentiation of, and the differences between, legally binding and non-legally binding international instruments. States are concluding an increasing number of non-legally binding international instruments, and the author seeks to define this term, the differences entailed by the procedure for concluding such instruments and the legal effects in the Slovenian legal order. The principle of transparency renders particularly weighty the finding that even non-legally binding international instruments must be publicly available and may be confidential only in exceptional cases that are in accordance with the Slovenian legislation. However, the author finds that the most sensitive issues are often the subject of non-legally binding international instruments.

**Mateja Grašek: Succession of the Republic of Slovenia to the Treaties of the Former Yugoslavia**

The author explains and presents the realisation of two fundamental principles of the succession of states in respect of treaties, namely *tabulae rasae* and the principle of continuity, and examines the succession of the Republic of Slovenia to the treaties of the Former Socialist Federal Republic of Yugoslavia. She notes the complexity of succession in respect of treaties and the need for flexibility, which can only arise from practice. The article comprehensively presents the Slovenian practice of succession to the SFRY’s bilateral and multilateral treaties since Slovenia’s independence. In the conclusion, the author finds that a standardised approach to succession-related issues has not yet been attained, despite the tendency to uniformise the “European law” (and legal space). This indeed enriches expertise, but practice can never provide ready-made solutions in advance.

### **Ana Polak Petrič: Reservations to Treaties**

The article comprehensively presents the system of reservations to treaties and related issues. The author examines the existing system based on the Vienna Convention on the Law of Treaties and presents the solutions of the Guide to Practice on Reservations to Treaties recently adopted by the UN International Law Commission and also Slovenian practice in this field. In the Slovenian system, reservations to treaties on human rights are not permitted, which is a noteworthy feature. The main idea of the article is that the instrument of reservations attracts more countries to treaties (universalisation); however, too many reservations may compromise the integrity (cohesion) of treaty arrangements. The author notes the importance of striking the right balance between these two poles. Understanding the system and the procedures for expressing reservations and objections to reservations is vital for understanding treaty relations between states.

### **Mateja Grašek: International Organisations and Their Constituent Instruments**

The author focuses on international organisations and their constituent instruments, presenting the key elements and common characteristics of constituent instruments of selected international organisations. She underlines that international organisations may be founded for different purposes and that constituent instruments may be adopted in the form of treaties or resolutions, depending on the political will of states. International organisations are living organisms, so the scope of their constituent instruments may eventually be exceeded. In such cases, the doctrine of implied powers, which allows international organisations to develop dynamically and adapt to existing realities, may be useful.

### **Mihael Zupančič: The Effects of Treaties and International Unilateral Acts of States**

The author examines in detail the important, but frequently overlooked question of the effects of unilateral declarations of states. He observes that, compared to other EU member states, Slovenia annually signs numerous international instruments. Unlike treaties, unilateral declarations of states generally have no international legal effects, unless the state which makes such a declaration decides otherwise. Politicians usually neglect the fact that declarations made by state representatives may have major legal effects and implications in inter-state relations and that, as such, they must be treated with the utmost caution. The author also touches upon the effects of treaties and declarations on third states. Despite the general principle that these effects are not binding on third states, certain exceptions exist and are also presented.

### **Tadeja Marinič: Recording and Keeping Custody of International Instruments**

The author analyses the recording and keeping custody of international instruments, both of which have far-reaching implications in practice. Registers ensure a formal, authoritative overview of treaties that are binding on Slovenia, including

all essential information on the date and place of conclusion, signatories, parties, entry into force. Prior to the ratification procedure, every treaty must also be entered in the Slovenian Legal Instruments Database, containing information on their application in the Slovenian legal order. The keeping custody of international instruments is equally important. The author points out that the Ministry of Foreign Affairs keeps custody of all the originals and certified true copies of treaties and non-legally binding international instruments signed by the Republic of Slovenia as well as other adopted international treaties sent by the depositaries. It thus keeps custody of valuable documents that are sources of the international legal rights and obligations of the Republic of Slovenia, constituting a unique national treasure.

**Aleksander Čičerov: The Role and Status of Depositaries of Treaties, Registration and Keeping Custody of Treaties and Related Documents**

The author underlines that being a depositary of multilateral treaties is a prestigious duty, which also implies considerable responsibility. Being entrusted with the custody of an original of the treaty by the contracting parties is a major honour for a state, which thus also assumes the responsibility to act impartially in the performance of depositary duties. However, as the author points out, a prospective depositary must agree to assume this role. Slovenia recently became a depositary of several treaties, which confirms its relevance in international legal relations. The question of depositary functions is also related to the question of the official registration of treaties, with Article 102 of the UN Charter providing the legal basis.

**Božena Forštnarič Boroje: International Agreements as the External Dimension of EU Action**

The author concentrates on international agreements as the external dimension of EU action. External relations constitute one of the most complex legal areas within the EU. The author first deals with the status of international agreements in the European Union *acquis*, and then continues with the procedure for concluding agreements between the EU and other international entities. She divides EU international agreements into different categories and analyses their characteristics. This is particularly important in the context of the new, unified legal basis of the EU introduced with the Treaty of Lisbon. Considering that, unlike countries, the international community has no central legislative authority with the power to conclude internationally binding legal rules, or an international court with the power to interpret and implement international law, the author establishes that treaties are the closest thing to legislative documents in the international community.

**Andrej Svetličič: Procedure for Concluding Treaties in the Context of Slovenia's EU Membership**

The author focuses on the internal procedure for concluding treaties in the context of Slovenia's membership of the EU, a unique international organisation with its

own comprehensive legal system. The latter also covers external relations, which the EU also regulates by treaties. The author thus first examines the legal bases for the conclusion of treaties in the EU and in Slovenia, proceeding with the internal legal procedure for concluding them in Slovenia as an EU member, including the specific procedural stages and actions needed. He observes that, due to the complexity of the procedure and overlapping powers, it is vital that all the government departments closely follow the relevant preliminary procedures through the EU Portal electronic system.

### **Danijela Horvat: The Regulation and Practice of Human Rights Conditionality in the European Union's Treaty Relations**

The author addresses regulation and practice of human rights conditionality in the European Union's treaty relations. The human rights clause has a special place in the EU's human rights policy. The Article presents the evolution and legal analysis of its application in agreements that the EU has concluded with other international entities. Given that the EU's primary law dealt only with economic issues, the introduction of the human rights clause into the EU's agreements brought about a major conceptual shift. The author underlines that, in accordance with the Vienna Convention on the Law of Treaties, failure to respect this clause may constitute a material breach of a treaty and a ground for terminating the treaty or suspending it in whole or in part. She concludes that the Treaty of Lisbon importantly strengthened the legal basis for the application of the human rights clause in the EU's treaty relations.

### **Marko Rakovec: Bilateral Investment Treaties**

The Article features a historical overview of the evolution of bilateral investment treaties and their detailed analysis. These treaties focus on economic objectives, including increased productivity and the creation and organisation of companies, as well as job creation within a certain country and abroad. The author analyses in detail the elements of investment treaties and the procedure for concluding them, with a particular emphasis on the EU. He then addresses the legal and practical effects of the Treaty of Lisbon on bilateral investment treaties for EU member states, considering that the Treaty of Lisbon lists foreign direct investments among the common trade policy provisions, which thus fall under the EU's exclusive competence. The author also sheds light on the settlement of disputes concerning investment treaties, focusing on arbitration, which is becoming an increasingly important source of international law. He concludes that, along with state guarantees and the system of dispute settlement, bilateral investment treaties are cornerstones of international legal framework as regards investments.

**Tadeja Marinič and Marko Rančigaj: The Conclusion of International Agreements on Economic Cooperation in the Republic of Slovenia**

The authors first define the theoretical bases for economic cooperation between states and the conclusion of agreements on economic cooperation, which promote close and effective economic cooperation between states, and examine the legal aspects of economic diplomacy. They establish that globalisation has increased the scope of Slovenian diplomacy, which in recent years has been increasingly concerned with concluding international economic agreements in order to boost economic activity in Slovenia. The authors also examine in detail the elements of such agreements and the procedure for concluding them. A special feature of agreements on international economic cooperation are mixed inter-state commissions, which meet annually and confirm joint projects, the motors of economic cooperation between the relevant contracting parties.