

Video Transcript

The Law of Treaties – Gleider Hernández

Hi, and welcome to my mini-lecture on Chapter 7 of *International Law*, which concerns treaties and the law of treaties as we understand it.

Now, in Chapter 2 we discussed treaties as a source of law because treaties express the consent of states and, because they're written down, they're an important and if not one of the dominant sources that we recognise as being a valid source of international law. But in this chapter we go into treaties in more detail in another respect: we talk about how a treaty comes into force, how a treaty is created, who can sign on behalf of the state. We also talk about the nature of treaty obligations; the extent to which they're binding, on whom they're binding. Now, they're binding on the state as a whole and, of course, its officials, but sometimes the question of the scope of the obligation, and whether it applies, for example, to individuals, also becomes relevant. We talk in particular, when we spend quite a bit of time discussing the rules and how treaties are interpreted. Now treaties, like all texts, are written agreements that express the intention of an author. In international law we call that 'the intention of a party'. And what we mean by that is when we interpret a treaty we're trying to interpret the rules and principles that that treaty has made binding on the states that have signed on to it. So international law has a number of rules concerning this.

We also talk about an important point, which is about the consent of the state to be bound to a treaty. Consent can also be the consent of an international organisation, but that category are called 'reservations to treaties', and in those reservations, states (or other actors) can choose to opt out, or to limit their consent to be bound: in effect, rewriting the provisions of the treaty to suit its own purposes. So around reservations a whole legal regime has sprung up that determines which reservations are permissible, which ones are impermissible, and how the reaction of other states is taken into account (because, of course, some of them are controversial). And it is quite problematic, in many respects, to consent to a treaty and then make a reservation that, in effect, means that a different regime applies to your state and not to other states. And the consequences of an invalid reservation, or an impermissible reservation, which can sometimes lead to a state being excluded from the treaty as a whole, which can sometimes lead to only those provisions being excluded, and in certain circumstances even, can lead to the reservation being 'severed', as we call, so it

is severable, and thus cut out, and the state is a party to the treaty without the benefit of the reservation at all.

We also talk about certain categories of treaties that are considered invalid. Those are, more often than not, treaties that have a defect in signature or, alternatively, violate a peremptory rule of international (so a norm of *jus cogens*, in other words).

And finally, we talk about the rules through which a treaty can be terminated, suspended, or otherwise abrogated. And this is a particularly salient point when a state is seeking to withdraw from its treaty obligations and one needs to look within the treaty to see if it has made provision for this, or if it has excluded this, et cetera.

Above all, all of these rules seek to explain how actors enter into treaty obligations. For the most part (and I probably should have said this at the beginning of the lecture) they are codified in what is called the Vienna Convention on the Law of Treaties, itself an international treaty that seeks to explain the entire regime of the law of treaties and codify it in a useful, single source. And that treaty is itself, although only ratified by 113 states –broadly speaking– accepted as customary international law. So this chapter really focuses on telling that story, explaining the substantive rules that I've detailed at the beginning of this chapter, and explaining them through the language of that treaty that is now entered into customary international law.

Thank you.