Summary

Treaties and "Third" States
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1. The effects of international treaties on "third" States have to be dealt with on a spectrum between two opposite legal and political interests. On the one hand, the sovereignty of non-parties ought to be protected. The requirement of "third" party consent to obligations and rights derived from treaties concluded between other States is laid down in Arts. 34—38 of the Vienna Convention on the Law of Treaties. This consensual element has been further reinforced by the adoption of a South Vietnamese and a Syrian amendment by the Vienna Conference on the Law of Treaties.
2. On the other hand, the provisions on *jus cogens* in the Vienna Convention are meant to promote the common values of the international community. According to a view which was not objected to at the Vienna Conference, peremptory norms binding on all States can also be created by a qualified majority within the community of States. By contrast, the violation of a *jus cogens* provision in a treaty can only be invoked by the parties to that treaty in accordance with Art. 65 of the Vienna Convention.
3. With only a few minor exceptions, the provisions of the 1986 Vienna Convention on treaties concluded by international organizations closely resemble those of the 1969 Convention on treaties concluded by States. In view of the differences between those two types of subjects of international law, this similarity is worth emphasizing. With respect to the effects of treaties upon non-parties, however, Arts. 34—38 of both Conventions became essentially parallel only after the Vienna Conference of 1986 had wisely decided to delete the controversial Art. 36 bis of the ILC draft on the treaty law of international organizations. A specific provision on the obligations and rights arising for the member States of an international organization from a treaty to which it is a party would have caused a number of additional problems not covered by the Convention.
4. When it comes to *jus cogens,* however, IGOs are not placed on an equal footing with States in the 1986 Vienna Convention. Under its Art. 53, too, only States can create peremptory norms of general international law.
5. According to the ILC, the debatable and ill-defined majority principle should also govern decisions on the identification of international crimes and their consequences.

6. Within the Antarctic Treaty System, Art. X of the Antarctic Treaty and Art. XXII para. 1 of the Convention on the Conservation of Antarctic Marine Living Resources of 1980 are relevant to the topic under discussion. Under these provisions, the Contracting Parties will prevent any activity contrary to the principles of these treaties by anybody, including non-parties and their nationals. The qualification of that System as legally binding *erga omnes* turns out to be difficult, due, above all, to the "frozen" sovereignty claims and the recent objections by many non-parties whose interests did not require them to protest previously against the System.

7. The Non-Proliferation Treaty provides a particularly interesting example of the factual implications for non-parties of treaties which aim at universal application. However tempting the development of nuclear weapons may be for non-parties in terms of power politics, the so-called threshold countries, under collective pressure from the 134 States parties to the Treaty, have so far always denied having taken that step.

8. Art. I of the 1979 Second Additional Protocol to the Revised Rhine Convention can be regarded as the unilateral revocation of rights granted to Austria as a riparian State under the Act of Mannheim of 1868 if this treaty is interpreted textually. This step, however, was only a secondary — but legally relevant — aspect of the severe yet mainly factual effects of West European integration on outsiders — especially on (permanently) neutral States.

9. Permanent neutrality is frequently mentioned as an example of a status with effects *erga omnes*. It has witnesses a certain renaissance in the recent past (Panama Canal, Malta, Costa Rica). Experience shows that the form of its legal foundation (unilateral declaration, notification coupled with recognition, bi- or multilateral treaty) has hardly any bearing on the general recognition and political viability of this status (Switzerland, Austria, Panama Canal in contrast to Laos, Malta, Costa Rica).