Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Band 175, 2005, 395-398.

Summary

Means to Co-Ordinate International Treaties

This treatise focuses upon the examination and discussion of the extent to which international treaties overlap, the consequences of overlaps for the objectives of the relevant agreements and the approaches and means of public international law to solve conflicts and divergences between treaties. The overarching objective of a co-ordination of international agreements is to provide for a more coherent system of international law.

Each legal order has a vital interest in the coherence of its normative structures as well as of those norms created by the system. In principle this also applies to a system of public international law, although – in contrast to national legal orders – it is no legal system in the strict sense of the meaning due to the lack of a legislator and the particular nature of norms created by and valid between states. Public international law, instead of being a coherent legal system, rather consists of a closely woven net of different rules based upon treaties and customary law on the one hand and "soft law" and political maxims on the other hand. Many of these rules that build the body of public international law are interrelated, but they also overlap or contradict one another.

The thesis is divided into three parts. The first part deals with the relevance of overlapping and contradicting rules of public international law in a more general manner. The discussion of potential overlaps and contradictions between modern international agreements also attempts to categorise different varieties of conflicts. In this respect "true normative conflicts", i.e. incompatible rules and regulations, and conflicts in a wider sense of meaning are distinguished. In regard to conflicts in a wider sense several further subcategories are established. The categorisation depends upon the level and degree of conflict, i.e. *inter alia* whether the programmatic objectives of two treaties are contradictory, whether an overlap relates to more specific aims and targets or whether a conflict may result from the subsequent implementation of an agreement. Conflicts in a wider sense of meaning include all those divergences that do not necessarily result in the breach of either of the divergent rules. From the perspective of enhancing coherence of public international law, however, such divergences can have comparable nega-

tive influences upon the process as incompatibilities. That leads to the conclusion that all different categories of conflicts contribute to an undesirable situation of incoherence of rules of public international law.

Another focus of the first part is the analysis how international treaties have evolved from bilateral contracts between states to multilateral regimes that – in many cases – aim at universal participation to regulate issues of global relevance. The substantial and institutional development of treaties that has led to institutionalised agreements with specific organs for decision-making and administration is discussed in detail, because those multilateral environmental agreements that are the focus of the second part of the treatise are characterised by such an institutionalisation. Concerning ways to substantially co-ordinate different agreements the institutional development of multilateral treaties plays an important role in regard to the feasibility of the law of treaties and governance approaches to solve conflicts.

To exemplify the relevance of the theoretical problem of overlapping and divergent international treaties and to give concrete examples why the approaches to solve conflicts that are discussed in part III are also relevant from a practical point of view, part II relates to the identification and assessment of divergences between selected multilateral environmental agreements. The examination centres around overlaps between different agreements related to nature conservation and biological diversity on the one hand and to conflicts between the Convention on Biological Diversity and the Convention on the Law of the Sea, the Framework Convention on Climate Change, and the Convention to Combat Desertification, respectively, on the other hand. If one attempts to assess the potential for overlaps and conflicts between these treaties, it becomes apparent that divergences may have a negative impact upon the pursuit of the objectives of the treaties in question and may require some solution. States for which diverging agreements claim parallel validity have difficulties in implementing these treaties and may not fulfil their obligations as strictly as required and desirable. This applies regardless of the fact that the divergences in question are those in a wider sense of meaning and do not consist of incompatible rules.

In respect to approaches to solve overlaps and divergences the third part of the study first examines those regulations and mechanisms provided by the international law of treaties. In this context the objectives and scopes of rules of derogation and the relevance of potential hierarchies of norms in public international law are analysed in regard to their capability to enhance the coherence of public international law. The treatise then goes on to deal with conflict clauses in treaties and their

relevance for the co-ordination of treaties. The focus of the relevant chapter on mechanisms of the international law of treaties is set upon the interpretation of treaties and the possibility to establish a harmonising interpretation in order to co-ordinate treaties and to avoid or solve divergences. Other mechanisms of the Vienna Convention on the Law of Treaties that can potentially be invoked to overcome conflicts are also examined.

All these approaches have in common that they are not suitable to provide for solutions for the different categories of conflicts examined throughout the thesis. This result can in summary be explained by referring to the circumstance that most mechanisms are of a derogatory nature and do not envisage the co-ordination of treaties in the way that the substance of both diverging agreements is guaranteed to the furthest possible extent. This criticism applies to the rules of the Vienna Convention on the Law of Treaties as well as to conflict-clauses and the customary *lex posterior* and *lex specialis* rules. A harmonising interpretation of treaties, although in principle better suited to co-ordinate agreements, finds its limits when there is no ambiguous or unclear wording involved, i.e. when a change of the substantial content of a provision that cannot be achieved by the rules on treaty interpretation would be necessary to bring two treaties into coherence with one another. In general the rules of the law of treaties are not designed to solve conflicts between multilateral institutionalised agreements.

A closer look at institutional approaches to solve conflicts and to enhance coherence in international law leads from mechanisms of the law of treaties to governance and regime theory. On the basis of co-operation and governance fora for the substantial co-ordination of different agreements have to be created. However, it has to be kept in mind that the potential for overlaps and contradictions cannot be completely abolished but only be diminished by a grouping or clustering of agreements under a specific institutional roof. Where there are today a multitude of overlaps between single agreements there might still be some contradictions between different clusters of agreements after a restructuring of treaties, even if the treaties that are grouped together under one roof or other institutional structure were already brought into coherence by means of co-operation. While institutional collaboration and the creation of treaty clusters can be channelled to establish viable approaches to solve conflicts, there remains room for the application of the traditional law of treaties that is examined in detail by the study. As a consequence the dissertation does not propose a comprehensive reform of the law of treaties to enable this branch of public international

law to better deal with the co-ordination of treaties. It rather calls to limit the law of treaties to its original functions, i.e. to provide rules *inter alia* for the entry into force and termination of treaties or rules of interpretation, and to make the law of treaties with these core tasks and institutional governance mechanisms mutually supportive to provide for a more coherent structure of public international law.