



# Globalization of Contractual Law: A Brazilian Perspective

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## ABBREVIATIONS

AAA	– <i>American Arbitration Association.</i>
ICC	– <i>International Chamber of Commerce.</i>
CPC	– <i>Brazilian civil litigation code.</i>
CIDIP	– <i>Inter-American Conference of Private International Law.</i>
CISG	– <i>United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980).</i>
CDC	– <i>Brazilian consumer Code.</i>
CPI	– <i>Consumer Price Index.</i>
DCFR	– <i>Draft Common Frame of Reference.</i>
DIPRI	– <i>Private International Law.</i>
EU	– <i>European Community.</i>
EU	– <i>European Union.</i>
FOJ	– <i>Federal Official Journal.</i>
ICA	– <i>International Commercial Arbitration.</i>
ICDR	– <i>International Center for Dispute Resolution.</i>
ICJ	– <i>International Court of Justice.</i>
IMF	– <i>International Monetary Fund.</i>
INCOTERMS	– <i>International Commercial Terms.</i>
LCIA	– <i>London Court of International Arbitration.</i>
LINDB	– <i>Law of Introduction to the Rules of the Brazilian Law.</i>
MERCOSUL	– <i>Southern Common Market.</i>
OAS	– <i>Organization of the American States.</i>
OHADA	– <i>L’Organisation pour l’Harmonisation en Afrique du Droit des Affaires.</i>
PCCI	– <i>UNIDROIT Principles of International Commercial Contracts.</i>
PECL	– <i>Principles of European Contract Law.</i>
PICC	– <i>Principles of International Commercial Contracts.</i>
PIL	– <i>Public International Law.</i>
SCC	– <i>Arbitration Institute of the Stockholm Chamber of Commerce.</i>
SGECC	– <i>Study Group on an European Civil Code.</i>

TRIPS	– <i>WTO Trade-related aspects of intellectual property rights.</i>
UCC	– <i>Uniform Commercial Code</i>
UCP 600	– <i>Uniform Customs and Practice.</i>
ULIS	– <i>Convention relating to a Uniform Law on the International Sale of Goods.</i>
UNCITRAL	– <i>United Nations Commission on International Trade Law.</i>
UNCTAD	– <i>United Nations Conference on Trade and Development.</i>
UNESCO	– <i>United Nations Educational, Scientific and Cultural Organization.</i>
UNIDROIT	– <i>International Institute for the Unification of Private Law.</i>
WTO	– <i>World Trade Organization.</i>

## ABSTRACT

This book adopts the proposition that it is possible to the customs to be sources of contractual obligations. To support that premise, it was necessary to seek jurisprudential (arbitration and litigation) and comparative basis. Even more, due to contract law internationalization, customary international sources should be subject of domestic treatment, as they provide contractual obligations as well as they work as contractual interpretation tool. However, one can't neglect the need to control the customary content. In detailed terms, then, we can say that the role reserved for the custom as contractual law rules source has always been residual in Brazilian law. Accompanying the modern European experience, doctrine and Brazilian legislation emphasize the secondary, when not merely interpretive, role of the contractual custom. In turn, Brazilian case law wasn't able to give general treatment to contractual custom. Moreover, the process of reducing distances and cultural, social and economic approximation, usually called globalization, influenced the contracts through the incorporation of a number of solutions brought from the international trade practice. Although they might be justified by the age-old principle of freedom, somehow these international "uses" insinuate themselves into Brazil to the point of requiring that the Brazilian Courts themselves to give them treatment and shelter. On one side, if you deny the existence of a creative normative role in contractual custom by another, albeit indirect, is recognized not only their existence but the possibility of foreign origin. This paradoxical treatment reflects, to some extent, another consequence: the Brazilian contract law is in the process of internationalization. Here, then, a new confrontation is announced: a broad creative freedom (a tributary of the so-called *Lex mercatoria*) and the foreign act incorporation control (public policy). Unlike before, however, no simplistic answer would be feasible, particularly because of the complexity of contemporary and regulatory Brazilian contract law.

**KEYWORDS:** CONTRACT - CUSTOM - INTERNATIONALIZATION - NORMATIVE PLURALISM - LEX MERCATORIA - PUBLIC ORDER.