International Agreements and Financial Regulation: constitutional limits and legal strategies in the Role of the Banco Central do Brasil

DOI: https://doi.org/10.58766/rpgbcb.v19i2.1253

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Recebido/Received: 6/11/2025
Aprovado/Approved: 31/3/2026

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Abstract

This article analyzes the constitutional limits and legal strategies involved in the role of the Banco Central do Brasil *within the context of international financial regulation. Drawing on the increasing integration of global financial markets, it examines the tension between national sovereignty and international commitments, as well as the legal mechanisms that ensure compatibility between trade liberalization and the protection of domestic interests. The study addresses international financial services agreements and the technical and legal role of the Central Bank in formulating and implementing international commitments. It concludes that international financial regulation requires flexible legal solutions that preserve the regulatory autonomy of States and ensure their systemic stability.*

Key words: *financial regulation; sovereignty;* Banco Central do Brasil; *international agreements; financial services; public international law.*

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Introduction

The growing integration of international financial markets has profoundly transformed the role of States in formulating economic and regulatory policies. The Banco Central do Brasil, *as the monetary authority and regulator of the national financial system, stands at the center of this dynamic, being called upon to participate in international negotiations, implement multilateral commitments, and preserve domestic financial stability. This article proposes a legal analysis of the role of the* Banco Central do Brasil *within the context of international financial regulation, focusing on constitutional limits, legal strategies, and the articulation between legal and regulatory instruments that support its actions.*

The article argues that the regulatory autonomy of the Banco Central do Brasil, *particularly in prudential matters, also depends on flexible legal instruments, such as safeguards and exception clauses, which make it possible to reconcile international commitments with the constitutional limits imposed by Article 192 of the Federal Constitution, which entrusts the regulation of the National Financial System to supplementary legislation. In light of the normative framework established by Law No. 4,595/1964 and updated by Complementary Law No. 179/2021, it is argued that internalization through regulatory acts, when appropriate, provides swift and technically adequate responses consistent with this framework, without replacing the statutory discipline required. This reduces the gap between rapid financial innovation and the slower legislative process.*

1 International financial integration

Globalization has intensified capital flows, investments, and financial services, resulting in unprecedented global integration of economies and financial systems. Additionally, the spatial fragmentation of production chains – driven by multinational enterprises – has promoted international integration through participation in global value chains. Financial and monetary integration processes are propelled by this global economic dynamic, which connects markets, regulations, and economic policies on an international scale. Fueled by revolutions in transportation, communications, and computing, the significant expansion of international trade in recent decades has been accompanied by growth in cross-border portfolio diversification and a substantial increase in capital movements.

The intensification of these flows and the deepening of economic and financial integration foster economic development through several channels, including the increased benefits associated with foreign capital inflows, improved allocation of domestic capital, and reduced volatility in the consumption of goods and services. International financial and monetary integration is viewed as a driver of economic growth, employment, and development. However, this development may be uneven, depending on how each country positions itself within global value chains, which affects its ability to capture the benefits of integration. For this reason, financial and monetary integration processes actively seek deeper convergence, aiming for systemic and competitive outcomes through economies of scale, increased competition, innovation, and enhanced efficiency.

Nevertheless, despite the potential benefits, international financial integration poses significant problems and risks.

One major issue is that capitalist economies, particularly those with sophisticated and continuously evolving financial systems, are inherently unstable. This instability requires the adoption of containment and risk-mitigation instruments, such as countercyclical buffers: capital reserves that banks must accumulate during periods of prosperity to absorb losses during crises. In Brazil, the Banco Central do Brasil *incorporated this instrument into prudential regulation through Resolution No. 4,193/2013 and Circular No. 3,769/2015, establishing the Additional Countercyclical Capital Buffer (ACPB), which remains at 0% to date.*

Macroprudential measures designed to preserve the stability of the financial system as a whole, by addressing systemic risks and procyclical behaviors, also stand out. Between 2010 and 2014, Brazil adopted several such measures, including increased reserve requirements and higher capital requirements for long-term credit operations, particularly consumer credit, to curb excessive credit growth and prevent asset bubbles.

In some cases, regulators resort to the controversial mechanism of ring-fencing, which consists of legally and financially isolating certain operations or entities within a banking group to protect domestic assets from external shocks or crises in other jurisdictions. After the 2008 financial crisis, the United Kingdom implemented ring-fencing through legislation that took effect in 2019, requiring major banks to separate retail activities, such as deposits and payments, from investment operations to insulate essential banking services from the volatility of global financial markets.

Because of interconnected banking systems, shocks are transmitted rapidly and broadly throughout the financial system and the economy, potentially causing interactive inflations, speculative bubbles, or severe debt-deflation spirals. This was the case during the 2008 global financial crisis, whose main causes included the uncontrolled expansion of mortgage credit in the United States, particularly in the subprime segment, the securitization of high-risk assets with little transparency, excessive leverage by financial institutions, and inadequate regulation of derivatives and investment banks. These factors, combined with overreliance on risk models and the interconnection of global markets, created an environment conducive to systemic collapse, which quickly spread across the international financial system, producing recession, unemployment, and the need for large-scale governmental intervention.

This speed of propagation tends toward immediacy with the adoption of real-time payment systems (RTPs), such as Pix in Brazil, which allow funds to be transferred within seconds, 24 hours a day. The spread of virtual assets, such as cryptocurrencies and stablecoins, further amplifies this dynamic, since they operate on decentralized and global networks often outside the reach of traditional regulation, potentially accelerating the transmission of shocks and increasing supervisory complexity.

The global presence of stablecoins backed by foreign currencies, especially tokenized U.S. dollars, also poses direct challenges to monetary sovereignty by creating private means of payment that may replace the national currency in everyday transactions. This phenomenon, which goes beyond prudential concerns, may limit the State's ability to conduct monetary policy, manage liquidity, and maintain the currency's role as a unit of account and store of value, approaching emerging forms of digital dollarization.

2 International financial regulation

The global economy moves with speed and innovation, while the law must keep pace with this expansion through adaptive legal responses and sophisticated institutional strategies aimed at preserving legal certainty, regulatory sovereignty, consumer protection, and financial systemic stability.

This phenomenon is marked by a temporal asymmetry: the economic sphere is dynamic and disruptive, whereas the legal sphere is formal and gradual.

> *As highlighted in the Relatório de Economia Bancária 2017, p.24 of the* Banco Central do Brasil, *the financial system is extremely dynamic in its economic foundations, in the continuous incorporation of new technologies, in the evolution of market structures, and in other aspects, creating, for the regulator, a kind of "moving target".*

The dynamics of financial and capital markets are driven by constant innovation and intensive use of information technology. The very definition of a capitalist economy with a sophisticated, complex, and continuously evolving financial system implies periods of instability and turbulent, even chaotic, behavior, which are endogenous phenomena.

In contrast, the law, being formal and gradual, often finds itself forced to adjust to market practices that advance at a much faster pace, shaped by custom and commercial usage.

The general legal theory has been refined to keep pace with developments in this field; however, it often proves insufficient to address new realities. Guerreiro's classic observation (1986, p. 17) remains accurate:

> *In the field of credit instruments, so much effort was devoted to building a geometrically perfect theory and doctrine... that countless difficulties immediately arose for jurists trying to explain the development of negotiable-instrument institutions that commercial practice had distorted away from their theoretical purity.*

International financial regulation aims to establish norms and control mechanisms that ensure the soundness, efficiency, and resilience of the global financial system. Given its systemic nature, with the potential to amplify crises and imbalances, such regulation is essential to mitigate risks and sustain economic development over time.

Financial regulation operates on two normative levels: the Legal (statutory) made up of formal laws that provide the legal basis for State action and the Delegated legislation (regulatory) composed of resolutions, circulars, and rules that allow greater agility and adaptability in response to market change.

This flexible regulatory structure is essential for the Banco Central do Brasil *to respond quickly to financial innovations while maintaining legal coherence and regulatory certainty.*

Because of its complexity and interdependence, the financial system is susceptible to instability and chaotic behavior. Regulation seeks to contain endogenous forces that generate inconsistency and vulnerability. Reforms such as the Basel III framework aim to strengthen banks' capacity to absorb financial and economic shocks, reducing the risk of contagion to the real economy. The macroprudential approach introduced by these reforms considers system-wide risks that accumulate over time, requiring higher capital from systemically important banks.

However, despite the widespread adoption of the Basel framework and Financial Stability Board (FSB) standards, significant controversies remain. Part of the literature argues that these standards reflect the priorities of advanced economies and may impose disproportionate costs on emerging markets, which face different financial structures and supervisory challenges. For this reason, rather than adhering uncritically to global standards, countries such as Brazil must actively participate in their formulation to ensure that domestic specificities are taken into account. This helps preserve regulatory space for policies adapted to national contexts.

Financial regulation seeks to correct vulnerabilities exposed by crises through promoting improved risk-management practices and corporate governance, with the goal of reducing the likelihood and impact of bank failures. Financial market infrastructures, due to their systemic relevance, must operate with security and efficiency in accordance with the Principles for Financial Market Infrastructures (PFMI), contributing to system stability.

Macroeconomic stability is considered essential for effective banking supervision, and a sound banking system is fundamental for sustained economic development. Regulation thus seeks to shield economies from international volatility and crises.

Confidence in the financial system depends on transparency and the integrity of institutions and market practices. The 2008 crisis underscored the importance of transparency in enabling market participants to understand risks associated with banking operations. The regulation of conduct aims to remedy market failures caused by information asymmetries between consumers and financial institutions, promoting financial education and adequate consumer protection. It must also include measures to prevent money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, in accordance with standards set by the Financial Action Task Force (FATF).

International financial regulation has been shaped by responses to major crises that reveal systemic vulnerabilities driving structural reforms. The Great Depression, in 1929, exposed the limits of traditional economic theory, which relied on austerity and the belief in automatic market equilibrium. In contrast, economists such as Michal Kalecki and John Maynard Keynes advocated active fiscal and monetary policies to stimulate aggregate demand and combat unemployment. These ideas influenced the creation of multilateral institutions such as the International Monetary Fund (IMF) and the World Bank.

The Asian financial crisis in 1997 revealed risks associated with rapid financial liberalization without adequate supervision, including vulnerability to volatile capital flows and exchange-rate fragility. Policy responses, notably IMF-led rescue packages conditioned on austerity, triggered debate over transparency, preventive regulation, and regional cooperation mechanisms.

Moreover, the 2007–2008 global financial crisis revealed the interconnectedness and fragility of the global financial system, underscoring the roles of subprime mortgage markets, excessive leverage, and insufficient regulation of non-bank institutions (shadow banking). The international response included extensive regulatory reforms such as Basel III, the creation of the Financial Stability Board (FSB), strengthened conduct regulation, and revised standards for financial market infrastructures (PFMI). The crisis also reinforced the importance of macroprudential regulation and renewed debate on the role of the State in economic stabilization.

3 Sovereignty

National sovereignty is defined as the principle according to which the State possesses "supreme authority over its territory and population, being legally independent from other States" (SARLET, 2017, p. 259). This principle implies that, both formally and materially, the national legal order is hierarchically superior to any external norm, agreement, or treaty.

In the Brazilian constitutional context, sovereignty is guaranteed by Article 1, item I, of the Federal Constitution:

> *Art. 1. The Federative Republic of Brazil, formed by the indivisible union of the States, Municipalities, and the Federal District, constitutes a Democratic State governed by the rule of law and is founded on: I – sovereignty.*

The principle of national sovereignty makes clear that there is no universal international legal truth applicable to all, nor is there an international court with universal and mandatory jurisdiction over all States.

The relationship between international financial regulation and national sovereignty is complex and crucial, marked by tension between, on one hand, the need for global integration and systemic stability, and, on the other, the preservation of States' capacity for autonomous action (regulatory sovereignty).

Participation in multilateral forums aims to foster technical cooperation in disseminating international regulatory best practices and incorporating them into the domestic regulatory framework, consistent with Brazil's strategic alignment and the international commitments assumed by the Brazilian State. More than merely following best practices, Brazil seeks to participate actively in their formulation, ensuring that domestic specificities are taken into account in developing international regulatory standards. This strategic participation in multilateral forums strengthens regulatory sovereignty by enabling the country to shape international norms in a manner consistent with national interests and institutional realities.

The conduct of States such as Brazil in international negotiations reflects this tension, as they seek a balance that promotes the benefits of integration without compromising internal stability or political autonomy.

It is important to recognize that international financial integration, although pursued for economic growth and efficiency, inevitably imposes constraints on States' economic policy, especially in debtor countries. One corollary of such integration is the need for convergence among national macroeconomic policy objectives. This is reflected, for example, in the priority that central banks worldwide often attribute to controlling inflation, sometimes at the expense of the pursuit of full employment.

If the price of international financial integration is the reinforcement of a regime of high unemployment and low growth imposed on debtor nations, measures to strengthen the autonomy of national economic policy may become necessary.

In this context, exception clauses in international treaties gain relevance. These provisions allow signatory States to exclude or relax the application of certain treaty obligations under specific and justified circumstances. They operate as "escape valves" that safeguard legitimate national interests such as security, public health, public order, morality, and environmental protection. Examples include:

- ***GATT (General Agreement on Tariffs and Trade)***
  Its Article XX provides exceptions to liberalization rules to protect human, animal, or plant health, preserve natural resources, or comply with international obligations. Similarly, the ***GATS (General Agreement on Trade in Services)*** *contains exceptions allowing restrictions for public safety, health protection, or compliance with domestic regulations.*
- ***Mercosur–European Union Agreement and the Mercosur–EFTA Agreement***
  Both include exception clauses concerning sustainable development, sanitary and phytosanitary measures, public services, and government procurement – permitting justified regulatory flexibility while ensuring coherence with liberalization commitments.
- ***Human Rights Treaties***
  Some include derogation clauses (e.g., the American Convention on Human Rights /Pact of San José), authorizing temporary suspension of rights under exceptional circumstances such as states of emergency.
- ***OECD Instruments***
  OECD legal instruments and guidelines for multinational enterprises recognize that States may invoke national security exceptions, especially in the context of critical infrastructure, digital sovereignty, or strategic defense, provided that such measures are consistent with principles of international cooperation and good governance.

These clauses are essential to ensure that treaties remain viable and legitimate by respecting diverse legal systems and preserving State autonomy. Their strategic use reinforces the understanding that national sovereignty is not incompatible with international cooperation, so long as such cooperation respects constitutional supremacy and Brazil's fundamental principles.

Within the Brazilian system, treaties and conventions must be concluded not only in accordance with the Constitution's formal procedures but also with respect to its material limits, especially regarding fundamental rights and guarantees.

The Brazilian legal order is governed by the principle of the formal and material supremacy of the Constitution. As the Supreme Court Judge Gilmar Mendes states:

> *The Constitution did not need to declare itself superior to treaties; its supremacy is implicit in unequivocal provisions, such as those subjecting the approval and promulgation of conventions to the legislative process dictated by the Constitution… and that, consequently, explicitly admit constitutional review of treaties. (RE 466.343, vote of Judge Gilmar Mendes, Dec. 3, 2008)*

Although most treaties have the status of ordinary law, human rights treaties approved under the special constitutional procedure (three-fifths of votes in two rounds in each house of Congress, per Article 5 §3) attain constitutional status. If approved by the ordinary procedure, however, the Supreme Federal Court (STF) has assigned them ***"supralegal"*** *status – meaning superior to ordinary legislation but inferior to the Constitution.*

By contrast, investment and financial-services treaties have ordinary-law status and cannot regulate matters reserved for supplementary law. In this regard, the structure of the National Financial System cannot be modified by international agreements because Article 192 of the Constitution requires a supplementary law for such matters.

4 Safeguards

The concept of safeguards has become an essential legal and political instrument in international agreements, especially in the fields of trade and services. It is a broad term encompassing mechanisms, clauses, exceptions, and restrictions adopted by States or economic blocs to protect national interests, preserve regulatory sovereignty, ensure economic stability, and shield sensitive sectors when entering into liberalization commitments.

In international trade agreements, the term is explicitly used to describe protective instruments against excessive liberalization or harmful trade imbalances. For example, Article X of the General Agreement on Trade in Services (GATS) allows the adoption of emergency safeguard measures based on the principle of non-discrimination.

Bilateral agreements, such as MERCOSUR–EFTA, incorporate specific bilateral safeguard clauses designed to prevent or remedy serious loss resulting from surges in preferential imports. They also reaffirm the right of parties to invoke global safeguards under the WTO and authorize the adoption of provisional measures in critical circumstances where delays could cause irreparable harm.

In the financial sector, safeguards play a strategic role in protecting the State's regulatory capacity. The Prudential Carve-Out (PCO), included in the GATS Annex on Financial Services, ensures that countries retain the right to adopt prudential measures to protect investors and depositors, maintain the integrity of the financial system, and safeguard economic stability. GATS also provides specific economic safeguards, including the possibility of restricting trade in services to protect the balance of payments during external financial difficulties.

The concept of safeguards also extends to the protection of fundamental rights, such as banking and tax secrecy, and to preserving public-policy autonomy in areas like government procurement, public health, food security, and support for micro-enterprises.

In sector-specific annexes – for example, the telecommunications annex in the MERCOSUR–Chile Protocol – safeguards are included to prevent anticompetitive practices by dominant providers. These provisions aim to ensure a fair and balanced market environment, particularly in sectors characterized by high levels of economic concentration.

Reservations, also called limitations or qualifications, are explicit forms of safeguards because they define the scope of obligations a country is willing to assume. In agreements on services – such as the GATS and MERCOSUR's ACE Protocol 35 – commitments apply only to the sectors listed in each country's schedule and are subject to conditions listed therein.

In financial services, Brazil has consistently advocated for clauses guaranteeing the right to impose precautionary measures based on existing or future legislation. Reservations also allow the exclusion of strategic sectors such as defense, health, education, and mining from international commitments.

The Most-Favored Nation (MFN) principle under GATS (Article II) requires a country to extend to all WTO members the most favorable treatment granted to any one of them. However, the agreement itself contains safeguard mechanisms that allow permanent or temporary MFN exemptions. The GATS Annex II allows countries to maintain measures incompatible with MFN obligations so long as they are listed and justified. GATS also provides: General exceptions (Article XIV), which are measures necessary to protect public morals or health; and Security exceptions (Article XIV bis), measures taken to protect essential security interests. In crisis situations, Article XII allows restrictions on trade in services to address external financial crises to protect the balance-of-payments, acting like an economic emergency safeguard.

Thus, safeguards represent a cluster of legal instruments allowing States to preserve regulatory autonomy, protect strategic sectors, safeguard fundamental rights, and respond to economic imbalances. In the context of increasing international integration, these mechanisms are essential to ensure that trade liberalization does not compromise the State's capacity to govern responsibly, protect its population, and maintain internal stability.

An example that uses the mechanism is the "Electronic Commerce of Financial Services (GATS) – Mode 1 vs. Mode 2". Under the GATS/WTO, in Mode 1 (cross-border commerce) the service is supplied from the territory of one Member into the territory of another remotely; while in Mode 2 (consumption abroad): the consumer/client travels to the provider's territory. Mode 2 historically received few restrictions because it was conceived for tourism services – not for digital financial services. Recently, some negotiators in international trade forums have attempted to classify online financial operations as Mode 2 to reduce requirements related to domestic authorization and prudential supervision.

To prevent regulatory circumvention and preserve regulatory sovereignty, MERCOSUR financial regulators (SGT-4) consolidated the position that electronic financial transactions must be understood exclusively as Mode 1, accompanied by explicit treaty language: "The supply of a financial service by electronic means, including the Internet, shall be interpreted exclusively as Mode 1 under the GATS." This ensures that such services remain subject to the laws and authorization requirements of the destination country. The rule appears in the New Bases for Negotiating Financial Services in MERCOSUR, formalized in GMC Minutes No. 04/2012.

5 Procedure for the internalization of international treaties

The process of concluding, internalizing, and negotiating international treaties and conventions is a central topic in Public International Law and is governed by formal steps designed to safeguard State sovereignty. This process can be divided into two major phases: ***negotiation****, which concerns the production of the treaty text, and* ***internalization****, which encompasses the expression of consent and incorporation into domestic law.*

5.1 Production of the treaty text – Negotiation

Negotiation is the phase preceding the signing of the treaty and is dedicated to defining the content of the instrument. It is a fundamental tool of contemporary diplomacy, particularly in drafting treaties that regulate relations among States, international organizations, and transnational actors. Negotiations may occur: bilaterally, collectively, or within multilateral forums, ultimately culminating in formally structured treaty instruments.

The production of the treaty text begins with the definition of the negotiating authority, attributed internationally to:

- ***Heads of State and Government**,*
- ***Plenipotentiaries**, who hold full powers to negotiate, sign, or ratify international instruments on behalf of a State, and*
- ***National Delegations**, a group of representatives designated by a State to participate in international negotiations.*

In broader negotiations, such as those related to financial regulation, national delegations include technical experts, such as representatives of the Banco Central do Brasil*, who provide technical support to negotiators to ensure that the final agreement aligns with the domestic regulatory framework and preserves national stability and sovereignty.*

Bilateral Negotiations are conducted between two parties and follow diplomatic protocols with clearly defined objectives. A traditional method in this context is the exchange of diplomatic notes, a formal written communication method frequently used in technical agreements, regulatory cooperation, and investment facilitation treaties – such as Brazil's Cooperation and Facilitation Investment Agreements (ACFIs) with Mexico and Angola.

Collective or Multilateral Negotiations involve multiple actors – States, regional blocs, or international organizations – and occur in forums such as the United Nations (UN), the World Trade Organization (WTO), or global environmental conferences like the Conference of the Parties (COP). This modality requires greater coordination and seeks broad consensus among diverse interests. Processes typically involve public consultations, technical working groups, drafting base texts, and adoption by consensus or vote. A prominent example is the Paris Agreement on Climate Change (2015), negotiated by 195 countries and resulting in voluntary commitments to mitigate climate change.

Both bilateral and multilateral negotiations culminate in an international treaty, a final formal legal instrument that formalizes the terms agreed upon. The structure of treaties follow formal steps: negotiation, drafting, signing by the authorized representatives, ratification by the competent bodies from each country, and its entry into force. The treaties can concern themes such as commerce, environment, security, financial regulation or human rights.

Because Mercosur is a customs union, Brazil negotiates free trade agreements only jointly within the bloc. Nevertheless, Brazil may still enter into bilateral non-tariff agreements, namely memoranda of understanding and technical or scientific cooperation instruments – which do not involve broad commercial liberalization, in order not to violate Mercosur's negotiating coherence.

5.2 Expression of Consent and Incorporation – Internalization

Once the treaty text is produced, the process advances to the step in which the State expresses its consent to be bound internationally, followed by incorporation into domestic law.

A State may express consent in this process through:

1. *Signature, the formal act which concludes the negotiation of the text.*
2. *Exchange of Instruments, the exchange of documents formalizing the agreement.*
3. *Ratification, a formal act – generally of the Head of State – confirming the treaty internationally.*

The ratification of international treaties presents fundamental characteristics, namely the definition of competence, generally attributed to the Head of State or Parliament, depending on the legal structure in each country. It is a Discretionary act since, even after signing, a State may choose not to ratify. Besides that, ratification is a definitive act, once expressed, withdrawal cannot occur unilaterally unless the treaty itself or international law allows for it.

According to Rezek (2025, p. 52): "Ratification is the unilateral act by which the international legal person, signatory to a treaty, definitively expresses, at the international level, its intention to be bound."

In Brazil, consent for international binding is expressed according to specific constitutional rules, with the exception of certain executive agreements which may be concluded directly by the Executive Branch in specific situations, as part of existing treaties already in effect or as part of ordinary diplomacy. The general rule, as stated under article 49, (I), of the Constitution. Only after this approval can the President proceed to formally ratify it.

The process to internalize international treaties unfolds in four distinct phases:

1. Signature (Celebration): Performed by the President of the Republic, who has constitutional competence to conclude international acts.

2. Congressional Approval (Legislative Decree): The agreement is submitted to the National Congress, which must approve it through a Decreto Legislativo under Article 49(I) of the Constitution. International rules become domestically applicable only after this step.

3. Ratification: Once approved by Congress, the President ratifies the treaty – the act that confirms definitive international consent.

4. Presidential Decree of Promulgation

After ratification, a presidential Decree of Promulgation is issued. The decree is the act that concludes the ratification. This presidential decree entails three fundamental effects within the framework of domestic positive law, which are:

- *The promulgation of the treaty,*
- *The official publishing of it, and*
- *The domestic enforceability, incorporating it into Brazil's legal system.*

The treaty then becomes part of the domestic legal system upon entry into force and promulgation.

Once incorporated, the treaty faces the issue of conflicts between the treaty and domestic law. The current Brazilian system recognizes the prevalence of treaties over sub-constitutional domestic law, as well as parity between treaties and national legislation, depending on the subject matter and the quorum required for approval (human rights treaties approved under the procedure of Article 5, §3 of the Federal Constitution acquire constitutional status.

Constitutional Amendment No. 45/2004 introduced a special approval procedure (a qualified quorum) for international treaties and conventions on human rights. For such treaties to be equivalent to constitutional amendments, thereby acquiring both formal and material constitutional status, they must be approved:

- *In each house of the National Congress.*
- *In two rounds of voting.*
- *By three-fifths of the votes of their respective members.*
  If they do not follow this special procedure, human rights treaties already ratified by Brazil, although not comparable to constitutional norms, hold, according to the Federal Supreme Court (STF), a "supralegal" status, standing below the Constitution but above ordinary legislation."

It is worth noticing that treaties cannot override constitutional provisions, especially constitutional entrenchment clauses (cláusulas pétreas). The Federal Supreme Court (STF) expressly recognizes the constitutionality review of treaties, as seen in BRASIL, STF, ADI 1480, 1997.

Moreover, according to the STF: "It is legally impossible for a treaty or international convention to serve as a substitute for a supplementary law required by the Constitution." (STF, ADI 1480, 1997).

6 Dispute settlement

Dispute settlement is an essential element for ensuring the effectiveness and legal certainty of international treaties. Once an agreement is internalized by each signatory country, it becomes part of the domestic legal order in an autonomous manner, subject to each system's interpretations and procedures. This means that although the treaty's text is common to all parties, its application may vary significantly across jurisdictions, generating legal uncertainty.

Without a single, neutral forum to resolve disputes arising from the agreement, a party claiming injury may be forced to initiate legal action in multiple jurisdictions, facing:

- ***Different procedural rules,** affecting deadlines, admissibility of evidence, appeals, and enforcement;*
- ***Divergent judicial interpretations**, as each State may apply the treaty in light of its own legal tradition, case law, and national interests;*
- ***High litigation costs and delays**, due to the need to hire local counsel, translate documents, and manage simultaneous proceedings;*
- ***Risk of contradictory decisions**, when courts in different countries rule differently on the same issue without a supranational mechanism for harmonization.*

In addition to fragmentation across national courts, it is important to note that disputes arising under international treaties may also be brought before international courts or, in some cases, domestic courts. In Brazil, for example, once ratified and incorporated, treaties may serve as the basis for claims filed by individuals or institutions before domestic courts. This means that, even without an international forum, litigants may invoke treaty-based rights domestically – particularly in matters involving human rights, investment protection, or economic regulation.

This dual pathway increases the risk of divergent outcomes not only among States but also between international tribunals and national courts, unless treaties contain clear coordination mechanisms or previously agreed-upon arbitration clauses.

Given these challenges, international arbitration mechanisms play a crucial role in overcoming jurisdictional fragmentation. Arbitration provides a neutral forum, allows parties to select specialized arbitrators, and applies a common set of procedural rules, ensuring greater predictability, speed, and legal *certainty. Moreover, arbitration helps harmonize treaty interpretations, reducing normative conflicts and strengthening the trust of treaty partners.*

Examples of consolidated dispute-settlement frameworks include:

- ***World Trade Organization (WTO):*** *the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) establishes a tiered system featuring mandatory consultations, arbitration panels, and an Appellate Body. Decisions are binding, and the DSU provides for countermeasures in cases of non-compliance.*
- ***Mercosur:*** *the Protocol of Olivos governs dispute settlement among Member States, with stages including consultations, ad hoc arbitration tribunals, and the Permanent Review Tribunal (TPR), which serves as an appellate instance and may issue advisory opinions.*
- ***European Union Agreements (e.g., Mercosur–EU Association Agreement):*** *such treaties include specific dispute-settlement mechanisms addressing trade, environmental, and labor matters, with phases involving bilateral consultations and arbitration. Their objective is to maintain legal certainty and avoid fragmented judicial outcomes.*

These models demonstrate the importance of clear and institutionalized dispute-resolution clauses, especially in free-trade and international cooperation agreements, where diverse interests and legal systems demand technical, impartial, and effective solutions.

From an institutional perspective, Brazil may choose to strengthen State-to-State dispute-settlement mechanisms in future financial agreements, especially for matters involving prudential measures. This approach aligns with the GATS/WTO framework, where disputes in services are handled exclusively between Members, not by private investors. Within this framework, the Prudential Carve-Out (PCO) in the GATS Annex on Financial Services plays a central role. It allows countries to adopt measures necessary to protect investors and depositors, preserve financial integrity, and maintain systemic stability – even if such measures do not fully comply with liberalization commitments – provided that they do not constitute disguised restrictions on trade.

This arrangement enhances regulatory security by ensuring that prudential issues, which are highly technical and carry systemic implications, remain within the purview of State authorities, rather than investor-State arbitral tribunals whose logic may diverge from the objective of financial stability.

7 International agreements on financial services

There are various types of international agreements dealing with financial services, which may be classified as multilateral, regional, or bilateral.

Multilateral Agreements are concluded among numerous countries within the framework of international organizations, such as the World Trade Organization (WTO). The primary example is the General Agreement on Trade in Services (GATS), which entered into force in 1995 with the objective of establishing international rules for trade in services, including financial services. All WTO Members are parties to the GATS. The GATS is founded on principles such as: Most-Favored Nation (MFN) Treatment, requiring equal treatment of service suppliers from different countries; National Treatment, prohibiting discrimination between domestic and foreign services; Transparency and regulatory predictability. Financial services are regulated under specific annexes, including prudential safeguards designed to ensure financial stability.

Regional agreements are concluded among economic blocs, such as Mercosur and the European Union (EU), or Mercosur and the European Free Trade Association (EFTA). These agreements often include dedicated chapters on financial services. The Mercosur–EFTA Free Trade Agreement, signed in September 2025 in an

English version, is still subject to translation and ratification procedures. The agreement establishes a free trade area covering approximately 290 million people and a combined GDP exceeding USD 4.3 trillion. It includes commitments on: financial services, investment, intellectual property, and sustainable development.

The Mercosur–European Union Agreement, expected to be signed after completion of legal review and translation into official languages, will create one of the largest free-trade areas in the world, covering more than 780 million people and a combined GDP of over USD 22 trillion. The agreement also includes provisions on financial services and investment.

Bilateral agreements are concluded between two States, usually focused on technical and regulatory cooperation. One example is Brazil's Cooperation and Facilitation Investment Agreements (ACFIs) with countries such as Mexico, Angola, and Mozambique. Their objectives include facilitating investment flows, strengthening regulatory cooperation, ensuring transparency and predictability, including dispute-settlement mechanisms, and protecting States' regulatory autonomy.

7.1 The role of Banco Central do Brasil

The Banco Central do Brasil *(BCB) plays a strategic and multifaceted role in international regulation and negotiation, particularly in financial, monetary, and investment matters. Its technical activities aim to reconcile institutional autonomy and national financial stability with the international commitments undertaken by Brazil. This role aligns with the BCB's institutional mission of ensuring price stability, safeguarding a sound, efficient, and competitive financial system, and promoting socioeconomic well-being, as well as with the legal objectives established by Complementary Law No. 179/2021:*

> *Article 1. The* Banco Central do Brasil *has the fundamental objective of ensuring price stability. Sole paragraph. Without prejudice to its fundamental objective, the* Banco Central do Brasil *also has the following objectives: safeguarding the stability and efficiency of the financial system; smoothing fluctuations in the level of economic activity; and promoting full employment. (BRAZIL, 2021)*

In multilateral forums including the Basel Committee on Banking Supervision, the G20, the International Monetary Fund (IMF), and the World Trade Organization (WTO), the BCB participates actively in formulating international norms and best practices. Within the WTO, it monitors discussions on the GATS, particularly those related to the financial-services sector.

In the negotiation and implementation of international agreements on financial services, the Banco Central do Brasil *contributes through technical delegations that support bilateral, regional, and multilateral negotiations in coordination with the Ministry of Foreign Affairs (MRE), which holds legal competence under Article 44, items IV and IX, of Law No. 14,600/2023. This collaboration aims to ensure that Brazil's international commitments are aligned with the domestic regulatory framework, national financial stability, and regulatory sovereignty.*

In the context of Investment Cooperation and Facilitation Agreements (ICFAs) the BCB provides technical expertise to craft provisions that uphold regulatory autonomy, transparency, and predictability.

The BCB also participates in regional negotiations, such as the Mercosur–EFTA Agreement, which includes chapters on financial services and regulatory cooperation. Its institutional role in international relations is formalized by ***BCB Resolution No. 345/2023****, which establishes the Bank's International Negotiations Policy.*

Brazil's financial regulatory approach seeks to reconcile international commitments with national regulatory autonomy. A prominent example is Brazil's defense of the Prudential Carve-Out (PCO) clause in the GATS Annex on Financial Services, which guarantees countries the right to adopt prudential measures necessary to protect investors and depositors, preserve financial integrity, andrespond to economic crises.

This clause is fundamental to allowing the BCB to fulfill its regulatory mandate without being constrained by excessive liberalization obligations. Brazil has also advocated for treaty language confirming the State's right to adopt restrictions and precautionary measures under existing or future legislation, thus ensuring regulatory flexibility in the face of instability or financial innovation.

In practice, the BCB acts as a first filter to ensure compatibility between international commitments and the Brazilian Constitution. This includes assessing matters reserved for supplementary law (e.g., structure and operation of the National Financial System); constitutional limits on regulatory sovereignty; the Union's exclusive competence to legislate on currency, credit, and financial institutions; the supremacy of the Constitution over international acts. This technical scrutiny prevents international negotiations from producing commitments that exceed Brazil's normative competence or intrude into domains reserved for legislative processes, thereby preserving the constitutional architecture of the financial system.

Conclusion

International financial regulation imposes complex legal challenges on States, particularly with respect to reconciling international commitments with the preservation of regulatory sovereignty. This article concludes that the effectiveness of Brazil's international action in financial regulation depends on three complementary pillars: (i) robust safeguards that preserve prudential regulatory space; (ii) efficient mechanisms for infralegal internalization, capable of keeping pace with the speed of financial innovation; and (iii) strategic and vigilant participation in multilateral forums, to influence the formation of international standards in a manner consistent with the Brazilian Constitution, not only regarding matters reserved to supplementary law, but also concerning regulatory sovereignty, federal competencies, and constitutional supremacy.

In addition, BCB Resolution No. 345/2023, which establishes the International Negotiations Policy of the Banco Central do Brasil, *guides the Bank's technical and coordinated engagement in external relations, ensuring that national specificities are incorporated into international standards and that Brazil avoids assuming commitments that would unduly reduce its domestic regulatory space.*

The combination of these elements allows Brazil to exercise active regulatory sovereignty, rather than a merely defensive one, thereby contributing to a model of international financial integration aligned with the public interest, systemic stability, and legal certainty.

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