

España y la práctica del Derecho Internacional. LXXV Aniversario de la Asesoría Jurídica Internacional del MAEC, [Spain and the Practice of International Law. LXXV Anniversary of the International Legal Department of the Ministry of Foreign Affairs and Cooperation]. José Martín y Pérez de Nanclares (dir.) (Colección Escuela Diplomática nº 20, Ministerio de Asuntos Exteriores y de Cooperación, Madrid, 2014) 442 pages.

This book brings together the papers presented to the conference organized in November 2013 on account of the 75th anniversary of the International Legal Department of the Ministry of Foreign Affairs and Cooperation (ILD) and submitted for publication in spring 2014.

The book opens with a study of the history and the role of the ILD as the international legal advisory body to the State Administration and to the Government, written by its current Head, Professor José Martín y Pérez de Nanclares. It is an excellent work that, in a detailed and well-documented manner, outlines the functions that the ILD has progressively acquired and the main areas in which it develops its activities. It does so within the context of the evolution of International Law as well as Spain's internationalisation process in the last decades.

This study has few precedents (most notably, the work of A. Pérez Giralda 'La Asesoría Jurídica Internacional de gobiernos desde la función pública', which was included in the book *Iniciación a la práctica en Derecho Internacional y Derecho comunitario europeo* directed by Professor Carlos Jiménez Piernas and published in 2003) and it is of great interest for various reasons.

Firstly, it offers a snapshot of the Spanish international practice both in the field of Public International Law and Private International Law. In this sense, the study serves as a framework for the rest of the works included in the book, all of them related to the main subject areas on which the ILD has focused its activity. With a few exceptions, they are the work of former members or external advisors of the ILD.

Secondly, it confirms that the ILD has always been and must continue to be a place for both Diplomacy and University to come together and collaborate fruitfully. The Head of the Department has been held for over 53 years by professors of International Law from Spanish universities. Professor José María Trías de Bés y Giró directed the ILD for almost 27 years and his position was also occupied during numerous years by Professors Antonio Poch y Gutiérrez de Caviedes (also a diplomat), José Antonio Pastor Ridruejo and Concepción Escobar Hernández. Alongside them, there have been many other International Law professors –as well as the distinguished civil law professor, Federico de Castro y Bravo– who have (myself included) cooperated as members or external advisors. Among the latter are some of the most distinguished Spanish experts in International Law. We cannot fail to mention Professor Juan Antonio Carrillo Salcedo, Manuel Díez de Velasco and Julio González Campos, whose work has been followed by other prominent International lawyers and scholars that have participated in the elaboration of the book and whose collaborations I will address later.

In addition to the presence of academia in the ILD, I would also like to comment on the role that it has played as a catalyst for valuable research and teaching activities undertaken within the scope of International Law by some of the diplomats who rendered their services to the ILD. This is the case of José Manuel Lacleta, Aurelio Pérez Giralda, José Antonio Yturriaga y Barberán and Amador Martínez Morcillo, whose contributions to this book shall also be mentioned below.

Thirdly, as it explains the functions assumed by the ILD and the legal and administrative framework in which they are carried out, the introductory study reveals how complex Spain's foreign policy has become, which is not only related to the external dimension of the Autonomous Communities powers, but also to the essential and increasing presence of all the ministerial departments involved. Furthermore, this calls on the reader to reflect on what should be the role and the position of the Government's legal advisors on International law. In this regard, the work makes relevant references to comparative International Law and some of the major publications on this subject, among which the study by Julio D. González Campos in relation to this matter stands out ('Sobre la práctica en Derecho Internacional y Comunitario: los datos de su evolución histórica y las tareas del jurista en la realidad actual,' published in the abovementioned work directed by C. Jiménez Piernas).

After the introductory study, the work offers eighteen papers classified under six of the central topics which conform the advisory work carried out by the ILD: the Law of Treaties, the Law of the Sea, Judicial Settlement of Disputes, Private International Law, Diplomatic and Consular Law and International Humanitarian Law.

The Law of Treaties accounts for part the ILD's daily tasks; it is called to submit a report on every international treaty concluded by Spain. Certainly, this is a routine task, inevitably connected to the parliamentary procedure. However, on many occasions it allows to take a stand on matters -regarding treaties- that have not yet been resolved by Spanish Law (the possibility of a provisional application of a treaty, whether an international agreement should be considered a treaty or a political agreement, the procedure regarding agreements concluded pursuant to the implementation of treaties -the so-called 'administrative arrangements'-, the role of the State Administration in the conclusion of political agreements by the Autonomous Communities, etc.) or that have arisen after Spain's accession to the European Communities (as is the particular case of 'mixed agreements' concluded by the Member States and the EU) or other international organizations (simplified revision procedures of the founding treaties, implementation of their resolutions -especially when they are considered soft law-, etc.).

In this chapter, we find the contributions of three authors particularly qualified to explain the Spanish practice in the field and the work of the Department: two of its most renowned former Heads, José Antonio Pastor Ridruejo and Aurelio Pérez Giralda, as well as a reputed external collaborator, Professor Paz Andrés Sáenz de Santa María. Naturally, these three papers are not oblivious to the draft bill (currently Law 25/2014, of 27 November, on treaties and other international agreements) which at the time of the conference was under the legislative procedure (as a matter of fact, Professor Pastor Ridruejo's study defends the pressing need for the adoption of said Law) due to the impulse of the current Head of the ILD and its collaborators, among whom I would like to mention Antonio Pastor Palomar. In my view, despite the fact that this Law does not provide a solution for all the problems related to the conclusion of treaties by Spain, it does, however, contribute to clarifying the role that corresponds to each of the bodies and organisations that intervene or could come round to intervening in the conclusion of international agreements. This chapter lacks a contribution of Antonio Remiro Brotons (who could not participate in the conference), author of several preliminary draft bills (particularly, the one that led to the draft bill of 1985 which was drawn up as a result of Opinion of the Spanish Council of State n. 47.392, of 21 February 1985) and advisor to the ILD on numerous occasions and on various subjects, besides Law of Treaties (suffice it to recall his intervention before the ICJ in the *Fisheries Jurisdiction [Spain v. Canada] Case*).

It is not by chance that the Law of the Sea constitutes the second central topic of the book. The work of the ILD and some of its major collaborators, such as José Manuel Lacleta, Jose Antonio Pastor Ridruejo, José Antonio Yturriaga (former Heads) and Julio González Campos, has been closely linked to the negotiation of the 1982 United Nations Convention on the Law of the Sea, as well as its implementation and the evolution this legal area has experienced since the adoption of the Convention. José Antonio Yturriaga is the author of the work that opens this chapter of the book; in it, he assesses 15 years of implementation of the Convention.

Special mention should be made, regarding the last years of its activity, to the participation of the ILD in the development and application of the EU Common Fisheries Policy (CFP) and in other fields of EU action directly related to the Law of the Sea (including the COMAR Group of the Council) or before the International Tribunal for the Law of the Sea. As regards the Tribunal in Hamburg, the defence of the Kingdom of Spain in the *M/V 'Louisa' Case* by Professors Concepción Escobar (former Head of the ILD), Mariano Aznar, Carlos Jiménez Piernas and Rosario Ojinaga, deserves to be remembered. Concepción Escobar devotes her interesting and extensive contribution to the book precisely to this case. We can also mention the Spanish intervention in the request for an advisory opinion by the *Sub-Regional Fisheries Commission* (SRFC).

The current advisory work of the ILD has gained relevance in terms of the delimitation of maritime spaces, especially since Spain reported, together with France, Ireland and the United Kingdom, information to the Commission on the Limits of the Continental Shelf regarding the limits of the CFP shared by the four States, beyond 200 nautical miles. Esperanza Orihuela Calatayud, a well-known expert in this field and a compelling external advisor of the ILD, dedicates her work to his matter, as well as other maritime delimitation disputes faced by Spain, alongside the preceding analysis proposed by José Manuel Lacleta.

The work of the ILD in relation to the Judicial Settlement of Disputes that affect Spain is addressed in the third chapter, in which Philippe Cuvreur, Registrar of the ICJ, publishes the speech he delivered during the Conference on the contribution of the Court in the development of International Law. The number of cases in which the Kingdom of Spain has intervened before the Court is relatively small, but all of them (with the exception of the application instituting proceedings in the *Legality of Use of Force [Yugoslavia v. Spain]* case) have led to Court rulings and opinions of great significance, from the *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* Case and the *Western Sahara Advisory Opinion*, to the previously mentioned *Fisheries Jurisdiction (Spain v. Canada)* Case or the *Advisory Opinion on the Declaration of independence in respect of Kosovo*. In each and every one of these, the ILD has assumed the representation of Spain and coordinated its defence with the support of distinguished internationalists. Juan Manuel Castro-Rial represented Spain in the case concerning the *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, with the support of an important group of prestigious scholars (mostly foreigners), as José Antonio Pastor did in the Spain-Canada dispute on *Fisheries Jurisdiction*, being part of the team Professor Antonio Remiro Brotons, Professor Luis Ignacio Sánchez Rodríguez and Aurelio Pérez Giralda, amongst others. With regard to Spain's intervention in advisory proceedings, Santiago Martínez Caro (as Head of the ILD) participated in the *Western Sahara Case* together with José Manuel Lacleta and Julio González Campos, whilst Concepción Escobar (equally as Head) did so in the *Kosovo Case*, on that occasion with the collaboration of Paz Andrés Sáenz de Santa María, Jorge Cardona Llorens, Araceli Mangas Martín and Carlos Jiménez Piernas.

As already noted, the ILD has also intervened before the International Tribunal for the Law of the Sea. However, the ILD does not intervene in cases before the European Court of Human Rights (ECtHR) or the Court of Justice of the European Union (CJEU), despite the enormous contribution

it could make to Spain's defence. In the introductory chapter of the book, Professor Martín Pérez Nanclares comments on the *Kadi/Bosphorus* cases as well as on Opinion 2/2013 of the CJEU, regarding the accession of the EU to the ECHR, as examples of cases in which its participation would certainly have been convenient. In my opinion, its presence should be extended at least to all the (numerous) issues in which International Law is at stake. Additionally, it would also be advisable to bestow upon it a relevant role in Spain's defence in arbitration claims in the framework of bilateral investment treaties or pursuant to the European Energy Charter Treaty. It cannot be overlooked that investment arbitrations are ultimately decided under International Law, and in this sense it should be noted that the team representing Spain in the recent arbitration proceedings against it due to the budget cuts on the incentives for photovoltaic power plants lacks specialists on International Law (the team is integrated in the Directorate-General for the Legal Service of the State under the Ministry of Justice). Professor Manuel López Escudero, an excellent expert in International Economic Law, makes a contribution to the book concerning such recent arbitration proceedings.

In the third chapter of the book there is also a work on the International Criminal Court which was written, not surprisingly, by Juan Antonio Yañez-Barnuevo, former Head of the ILD and of the Spanish delegation in the diplomatic conference that negotiated the Statute of the Court.

The fourth chapter of the book deals with Private International Law and, specifically, the work of the Hague Conference on Private International Law and UNIDROIT, in which the ILD has an enhanced presence due to the endeavours of an extremely prestigious group of professors that have collaborated regularly with it as external advisors, amongst whom Alegría Borrás, Nuria Bouza and Francisco Garcimartín cannot go without mentioning. They are the authors of the studies that make up this part of the book, which discuss the current work of the Hague Conference on Private International Law and Spain's contribution to the cause (A. Borrás), the work of UNIDROIT and the new horizons that are opening up (N. Bouza) and the works of the Hague Conference and UNIDROIT in the financial sector (F. Garcimartín).

Diplomatic and Consular Law must also have a place within this book, since many enquiries are made to the ILD on this subject, as well as on the issue of immunities of States and their property, as former members of the ILD are well aware of, among whom I would like to mention Carlos Espósito Massici.

The need for Spain to enact a law on immunities of states and their property was advocated by the ILD years ago, to the extent that in the early nineties, the Head at the time, Professor José Antonio Pastor Ridruejo, actually assigned Professor Luis Ignacio Sánchez Rodríguez the task of elaborating a preliminary draft bill. This position remains unchanged, despite the fact that we already have an international convention on this matter, which Spain acceded to in 2011. As a matter of fact, the ILD is currently working on developing a new draft.

Coming back to the book now presented, the fifth chapter includes three works on the diplomatic functions, the consular functions and the European External Action Service, written by Amador Martínez Morcillo (former Head of the ILD), Eduardo Vilariño Pintos (external advisor) and Enrique González Sánchez (Ambassador on a Special Mission).

The book concludes with a chapter devoted to International Humanitarian Law, with the contributions of two experts on this subject: Professor Manuel Pérez González and General José Luis Rodríguez-Villasante.

It is hard to think of a better way to celebrate the 75th anniversary of the ILD than the publication of this book, directed and led by José Martín y Pérez de Nanclares.

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