

Spanish Literature in the Field of Public and Private International Law and Related Matters, 1997

This survey, prepared and compiled by E. Crespo Navarro (Assistant Lecturer in Public International Law) and M. Sarriá González (Research Assistant in Private International Law) under the direction of Dr. I. García Rodríguez (Lecturer in Private International Law at the University of Alcalá, Madrid), is designed to provide information for international lawyers and law students on matters concerning Public International Law, International Relations, Private International Law and Community Law published in Spain or by Spanish authors.¹

PUBLIC INTERNATIONAL LAW AND RELATED MATTERS

1. Essays, Treaties and Handbooks

CORRAL SALVADOR, C. and GONZÁLEZ RIVAS, J.J., *Código Internacional de Derechos Humanos*, (International Code of Human Rights), Colex, Madrid 1997, 1008 p.

DÍEZ DE VELASCO, M., ESCOBAR HERNÁNDEZ, C. and TORRES UGENA, N., *Código de Organizaciones Internacionales*, (Code of International Organisations), Aranzadi, Madrid 1997, 1326 p.

DÍEZ DE VELASCO, M., *Instituciones de Derecho Internacional Público*, (Institutions of Public International Law), 11th ed., Tecnos, Madrid 1997, 896 p.

This work, which is aimed mainly though not exclusively at university students, analyses the legal rules regulating the relationships between the different members of international society. The subject matter is divided into seven sections for didactic purposes.

¹ The enormous volume of works published on EC law has made it necessary to select only those which deal with general Community Law. We have been careful to include the works of authors who lecture in the fields of Public International Law, International Relations and Private International Law.

The first, entitled, "International society and the legal system (introduction to doctrine and sources of international law)", comprises chapters I to IX and deals with the international society on which international law operates, the concept and where it springs from, and relations between international law and domestic legal systems. The second, "International society and its members" (chapters X to XIV), addresses the issue of international subjectivity and analyses the different subjects of international law, paying special attention to the State as the source and main subject of law. The third section entitled "Government bodies in international relations" consists of only two chapters (XV and XVI), which describe the status and functions of the government bodies empowered to represent the State in the international sphere. The fourth, "The powers of States: content and limits", which covers chapters XVII to XXVI, is concerned with international rules that define State action in territory and with respect to people, as well as certain areas of particular interest for International Law such as the high seas, seabeds and outer space. The fifth section, "International cooperation" (chapters XXVII to XXXII), analyses the rules established in the framework of international cooperation organisations in certain areas of International Law that are particularly interesting and topical such as the protection of human rights and the environment, development promotion and international trade. The sixth section, "The application of International Law" (chapters XXXIII to XLI), examines important issues such as States' international responsibility, the different procedures for applying international rules (diplomatic protection of nationals, decentralised procedures and institutionalised procedures) and ways of settling international differences (diplomatic means and judicial means). The seventh and last section, "Law on armed conflict" (chapters XLII to XLIV), studies humanitarian law applicable in armed conflicts.

Bearing in mind the type of reader to whom it is geared, and to facilitate consultation of the different sources of knowledge of public international law, in addition to bibliographical references for each chapter and the usual indices of case law, authors and subjects, the book has an initial bibliographic and resource section including, among others, references to treaties, handbooks, collections of treaties and case law of international courts and tribunals, repertories of State practice and periodical publications.

The publication of this new edition in 1997 is justified by the continual changes international law is undergoing, which require a work of these characteristics to be updated. In this regard, this eleventh edition not only has updated bibliographic and case law references, but also includes new, particularly significant and topical subjects such as international economic law and humanitarian intervention, as well as a restructured format to ensure a balance between the different sections and chapters.

Lastly, it should be stressed that, as in previous editions, this work is the result of close collaboration between different Spanish universities. Specifically, this eleventh edition is the work of Dr. Victoria Abellán Honrubia, Dr. Gloria Albiol

Biosca, Dr. Oriol Casanovas y La Rosa, Dr. Concha Escobar Hernández, Dr. Agustín Font Blázquez, Dr. Gregorio Garzón Clariana, Dr. Carlos Jiménez Piernas, Dr. Diego J. Liñán Nogueras, Dr. Araceli Mangas Martín, Dr. Fernando Mariño Menéndez, Dr. Manuel Pérez González, Dr. Jorge Pueyo Losa and Dr. José Manuel Sobrino Heredia.

DÍEZ DE VELASCO, M., *Las Organizaciones Internacionales*, (International Organisations), 10th ed., Tecnos, Madrid 1997, 739 p.

The tenth edition of this handbook on international organisations has the same structure as the ninth edition, and is thus divided into three parts.

The first part, "General questions on international organisations" (chapters I to VIII), analyses the general theory of international organisations. The second part, "International organisations of universal scope" (chapters IX to XXI), consists of a detailed study of the United Nations system and the third and final section, "International organisations of regional scope" (chapters XXII to XXXIV), studies in depth the international organisations that exist in the different geographical areas.

Although only two years have elapsed since the previous 1995 edition, the frequent changes that take place within international organisations called for an update in order to offer the latest information to any reader who is interested in the phenomenon of international organisations. In this connection, all the chapters have been revised, and this is particularly noticeable in the bibliographic sections at the end of each, as well as in the indices of case law, authors and subjects at the end of the book.

Moreover, of the new features this edition offers with respect to the previous one, mention should be made, in the second part, of the greater detail and length of the analyses of important issues such as the role of the United Nations in maintaining international peace and security (chapter XII) and multilateral trade relations in the framework of the new WTO (chapter XXI). And with respect to the third part, the inclusion in chapter XXV, "The European Communities and the European Union", of a new section on the most important amendments for European Union law once the Treaty of Amsterdam comes into force.

Once again, it should be borne in mind that this handbook is the result of teamwork. We should therefore mention the university professors who have contributed to a considerable number of the chapters of this tenth edition. In particular, Dr. Victoria Abellán Honrubia, Dr. Jorge Cardona Llorens, Dr. Gregorio Garzón Clariana, Dr. Concepción Escobar Hernández, Dr. Manuel López Escudero, Dr. Araceli Mangas Martín, Dr. Fernando Mariño Menéndez, Dr. Manuel Pérez González, Dr. Gil Carlos Rodríguez Iglesias and Dr. José Manuel Sobrino Heredia.

FERNÁNDEZ TOMÁS, A., *Derecho Internacional Público. Casos y Materiales*, (Public International Law. Cases and Materials), 4th ed., Tirant lo Blanch, Valencia 1997, 774 p.

PUENTE EGIDO, J., *Casos prácticos de Derecho Internacional Público*, (Practical Cases of Public International Law), Edisofer, Madrid 1997, 448 p.

Lecciones de Derecho Internacional Público, (Lessons in Public International Law), 2 vols., Edisofer, Madrid 1997, 242 and 185 p. respectively.

REMIRO BROTONS, A. *et. al.*, *Derecho Internacional*, (International Law), McGraw-Hill, Madrid 1997, 1.320 p.

SALADO OSUNA, A., *Textos básicos de Naciones Unidas relativos a derechos humanos y estudio preliminar*, (Basic United Nations Texts on Human Rights and a Preliminary Study), Univ. de Sevilla, Sevilla 1997, 181 p.

SOBRINO HEREDIA, J.M., *Textos básicos de derecho internacional y relaciones internacionales*, (Basic Texts on International Law and International Relations), Tórculo, A Coruña 1997, 516 p.

VARIOUS AUTHORS, *Textos básicos de derecho internacional público*, (Basic Texts on Public International Law), 4th ed., Gráficas Signo, Barcelona 1997, 174 p.

ZORGBIBE, C., *Historia de las relaciones internacionales 1: De la Europa de Bismarck hasta el final de la Segunda Guerra Mundial* and *Historia de las relaciones internacionales 2: Del sistema de Yalta a nuestros días*, (History of International Relations 1: From Bismarck's Europe to the end of the Second World War) and (History of International Relations 2: From the Yalta System to the Present), trans. by M.A. Vecino Quintana, Alianza, Madrid 1997, 694 and 779 p. respectively.

2. Books in Hononr of

3. Monographs and Collective Works

ABAGA EDJANG, F., *La ayuda externa en el desarrollo de Guinea Ecuatorial*, (Foreign Aid in the Development of Equatorial Guinea), Libros de la Catarata, Madrid 1997, 224 p.

ABU TARBUSH, J., *La cuestión palestina: Identidad nacional y acción colectiva*, (The Palestinian Issue: National Identity and Collective Action), Eurolex, Madrid 1997, 292 p.

ACOSTA ESTÉVEZ, J. B., *El sistema jurídico de la Organización Internacional*

del Trabajo y el Derecho español, (The Legal System of the International Labour Organization and Spanish Law), Cedecs, Barcelona 1997, 318 p.

ADAD CASTELOS, M., *La toma de rehenes como manifestación del terrorismo y el Derecho internacional. Obligaciones estatales previas, coetáneas y posteriores a la comisión del delito*, (The taking of Hostages as a Manifestation of Terrorism and International Law. State Obligations prior to, during and after the Offence is committed), Ministerio del Interior, Madrid 1997, 510 p.

AGUILAR, J.M., *El 0'7% y el diálogo Norte-Sur*, (0.7% and North-South Dialogue), Dykinson, Madrid 1997, 240 p.

ALCAIDE FERNÁNDEZ, J., MÁRQUEZ CARRASCO, M. C. and CARRILLO SALCEDO, J.A., *La asistencia humanitaria en Derecho Internacional Contemporáneo*, (Humanitarian Assistance in Contemporary International Law), Univ. de Sevilla, Sevilla 1997, 159 p.

ARVIZU Y GALAGARRA, F., *La solución institucional del conflicto fronterizo de los Alduides (Pirineo navarro)*, (The Institutional Solution to the Border Conflict of the Alduides [Navarran Pyrenees]), Univ. de León, León 1997, 248 p.

BÁDENES CASINO, M., *La crisis de la libertad de pesca en alta mar*, (The Crisis of Freedom to fish on the High Seas), McGraw-Hill, Madrid 1997, 336 p.

BADÍA MARTÍ, A., *La participación de la ONU en procesos electorales*, (UN Participation in Electoral Processes), McGraw-Hill, Madrid 1997, 312 p.

BERTRAND, M., *La ONU*, (The UN), Acento, Madrid 1997, 112 p.

BLANC ALTEMIR, A., *Las Naciones Unidas al final del siglo*, (The United Nations at the turn of the Century), ANUE, Barcelona 1997, 124 p.

BLANQUER CRIADO, D., *Asilo político en España. Garantías del extranjero y garantías del interés general*, (Political Asylum in Spain. Guarantees for Aliens and Guarantees of general Interest), Civitas-Ministerio del Interior, Madrid 1997, 660 p.

BUJOSA VADELL, L.M., *Las sentencias del Tribunal Europeo de Derechos Humanos y el ordenamiento español*, (Judgments of the European Court of Human Rights and the Spanish System), Tecnos, Madrid 1997, 266 p.

CARACUEL RAYA, M.A., *Los cambios de la O.T.A.N. tras el fin de la guerra fría*, (Changes in NATO following the end of the Cold War), Tecnos, Madrid 1997, 275 p.

CÁRCEL ORTÍ, M.M. (Ed.), *Vocabulaire international de la diplomatie*, (International Vocabulary of Diplomacy), 2nd ed., Univ. de Valencia, Valencia 1997, 308 p.

ELIZALDE, M.D., *Las relaciones internacionales en el Pacífico (Siglos XVIII–XX): Colonización, descolonización y encuentro cultural*, (International Relations in the Pacific (18th–20th centuries): Colonisation, Decolonisation and Cultural Encounter), Consejo Superior de Investigaciones Científicas, Madrid 1997, 694 p.

FERNÁNDEZ DE CASADEVANTE, C. and QUEL LÓPEZ, F.J. (Coords.), *Las Naciones Unidas y el Derecho Internacional*, (The United Nations and International Law), Ariel, Barcelona 1997, 191 p.

GORTÁZAR ROTAECHE, C.J., *Derecho de asilo y no rechazo del refugiado*, (Refugees' Right of Asylum and of Non-Rejection), Dykinson-Univ. Pontificia Comillas, Madrid 1997, 426 p.

GRANADO HIJELMO, I., *Reflexiones jurídicas para un tiempo de crisis. Nuevo orden internacional, constitución europea y proceso autonómico español*, (Legal Reflections for a Time of Crisis. The New International Order, European Constitution and the Autonomy Process in Spain), EIUNSA, Barcelona 1997, 190 p.

HAUGLAND, C., *La ONU*, (The UN), trans. by R. Ramos, Paradigma, Madrid 1997, 64 p.

HINOJO ROJAS, M., *A propósito de la jurisdicción consultiva de la Corte Internacional de Justicia*, (Concerning the Advisory Jurisdiction of the International Court of Justice), Univ. de Córdoba, Córdoba 1997, 224 p.

The aforementioned book highlights aspects which are not always taken into account – perhaps because they are regarded as being of minor importance – in relation to the advisory powers of the International Court of Justice, even though they have a determining influence on its legal configuration. In this regard, while giving an overview of this jurisdiction, the book underlines both the substantive and complementary aspects.

The book, which has a prologue by professor Juan Antonio Carrillo Salcedo, followed by an introduction, starts by dealing with the framework of the advisory jurisdiction of the Court of The Hague from its origins as the Permanent Court of International Justice until its transformation into the International Court of Justice, also stressing the existence of a principle of functional continuity with respect to the issue of consultation between the two courts.

Later on, in chapter three, the focus is on the scope of *rationae personae* and

rationae materiae legitimisation of the advisory institution. This chapter analyses the subjects for which advisory opinions could be lawfully requested during the period of the League of Nations and that of the United Nations and also examines the material conditions required for such requests, in addition to the practice followed by the Permanent Court of International Justice and the International Court of Justice.

Another chapter analyses the procedure for adopting a request for an advisory opinion during the period of the League of Nations and that of the United Nations, addressing the voting conditions of the organs (political) empowered to advise the Court and the consequences of these conditions, furthermore underlining the difficulties of those bodies in completing the procedure for requesting an advisory opinion.

A subsequent chapter gives a detailed analysis of the nature and value of the advisory opinions issued by the Court and the doctrinal positions which have attempted to provide a response to this question. The author's opinion is included.

Two later chapters deal respectively with the conclusions the author has reached and the bibliography on which the research has been based.

Finally, the book ends with two chapters, the first of which contains some charts summing up the voting to date of the advisory opinions delivered by the Permanent Court of International Justice and the International Court of Justice, specifying, among other data, each matter in the original language, the requesting bodies, the number of judges who have taken part, the issues to which the Court has paid attention, the votes followed by the judges and the latter's specific remarks in this connection. The second of the chapters has a documentary appendix that reproduces the Rules of the International Court of Justice of 14 April 1978, the Resolution of 12 April 1976 on the Court's internal practice in judicial matters and Resolution 9 (1946) of the United Nations Security Council of 15 October 1946 on allowing non-party States to become parties to the Statute of the Court.

IRUSTA AGUIRRE, L., *La cooperación descentralizada al desarrollo desde los gobiernos regionales y locales*, (Decentralised Development Cooperation from Regional and Local Governments), Ministerio de Asuntos Exteriores, Madrid 1997, 204 p.

MARZAL, A. (Ed.), *Derechos humanos del incapaz, del extranjero, del delincuente y complejidad del sujeto*, (Human Rights of the Incapacitated, Aliens, Offenders and Complexity of Subject), Bosch, Barcelona, 1997, 260 p.

MASSO GARROTE, M.F., *Los derechos políticos de los extranjeros en el Estado Nacional. Los derechos de participación política y el derecho de acceso a funciones públicas*, (The Political Rights of Aliens in the National State. Right to take part in Politics and Right of Access to Government Posts), Colex, Madrid 1997, 420 p.

- MONTAÑA MORA, M., *La OMC y el reforzamiento del sistema GATT*, (The WTO and Reinforcement of the GATT System), McGraw-Hill, Madrid 1997, 240 p.
- MORENO LÓPEZ, A. (Coord.), *Los derechos humanos en la crisis del Estado del bienestar. Anuario del Seminario Permanente sobre Derechos Humanos III, 1996*, (Human Rights in the Crisis of the Welfare State: Yearbook of the Permanent Seminar on Human Rights III, 1996), Univ. de Jaén, Jaén 1997, 312 p.
- NEILA HERNÁNDEZ, J.L., *La Sociedad de Naciones*, (The League of Nations), Arco Libros, Madrid 1997, 96 p.
- PÉREZ SOLA, N., *La regulación del derecho de asilo y refugio en España*, (The Regulation of Right of Asylum and Refuge in Spain), Adhara, Granada 1997, 176 p.
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- PUENTE EGIDO, J., *La España que pudo ser, la España que debe ser. Reflexiones de un iusinternacionalista*, (The Spain that could have been, the Spain that must be. Reflections of an International Jurist), Univ. Pontificia Comillas, Madrid 1997, 66 p.
- REINARES NESTARES, F. (Coord.), *State and Societal Reactions to Terrorism*, Instituto Internacional de Sociología Jurídica de OÑATI, Guipúzcoa 1997, 168 p.
- RODRIGO HERNÁNDEZ, A.J., *Las Resoluciones obligatorias de las organizaciones internacionales de cooperación*, (The Compulsory Resolutions of International Cooperation Organisations), Tecnos, Madrid 1997, 363 p.
- RODRÍGUEZ-DRINCOURT ÁLVAREZ, J., *Los derechos políticos de los extranjeros*, (The Political Rights of Aliens), Tecnos-Univ. de las Palmas de Gran Canaria, Las Palmas 1997, 360 p.
- RUIZ MIGUEL, C., *La ejecución de las sentencias del Tribunal Europeo de Derechos Humanos. Un estudio sobre la relación entre el Derecho nacional y el internacional*, (Enforcement of the Judgments of the European Court of Human Rights. A Study of the Relationship between National and International Law), Tecnos, Madrid 1997, 184 p.

TELLO, A., *Extraños en el paraíso. Inmigrantes, desterrados y otras gentes de extranjera condición*, (Strangers in Paradise. Immigrants, Exiles and other People who are Aliens), Flor del Viento, Barcelona 1997, 191 p.

TORRECUADRADA GARCÍA-LOZANO, M.S., *Las salas ad hoc de la Corte Internacional de Justicia*, (The *ad hoc* Chambers of the International Court of Justice), Marcial Pons, Madrid 1997, 338 p.

VALLE MUÑIZ, J.M. (Coord.), *La protección jurídica del medio ambiente*, (Legal Protection for the Environment), Aranzadi, Pamplona 1997, 276 p.

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CARRILLO SALCEDO, J.A., "La noción de estados amantes de la paz, cincuenta años después de la entrada en vigor de la Carta de las Naciones Unidas", (The Notion of peace-loving States fifty years after the entry into force of the Charter of the United Nations), *Anuario IHLADI*, n. 13 (1997), 157–179.

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PRIVATE INTERNATIONAL LAW AND RELATED MATTERS

1. Essays, Treaties and Handbooks

BORRÁS RODRÍGUEZ, A. *et al.*, *Legislación básica de Derecho internacional privado*, (Basic Legislation of Private International Law), 7th ed., Tecnos, Madrid 1997, 865 p.

Once again, as has occurred each year since 1991, a new 1997 edition has been published of this work which is still intended to provide information that is basic yet complete enough to satisfy the needs of students, professors and practitioners of Law in dealing with problems of private international law. On this occasion, the authors (BORRÁS RODRÍGUEZ, A., BOUZA VIDAL, N., GONZÁLEZ CAMPOS, J.D. and VIRGÓS SORIANO, M.), as they state in the prologue, were encouraged by the fact that previous editions of the *Legislación Básica* have been used, together with other foreign collections, to compile similar works in countries such as Italy and Denmark.

This seventh edition has the same structure as the previous editions. The work begins with a section on "Basic regulations": the Spanish Constitution, the Treaty on European Union and the Treaty establishing the European Community. The following sections deal with "Procedural law and international cooperation between authorities", "Civil, commercial and international labour law", "Inter-regional law" and "Arbitration". Each of these sections distinguishes between domestic private international law and the EU, on the one hand, and conventional private international law, on the other, with the exception of inter-regional law, which is grouped into general rules and rules which are regional in scope or pertain to the autonomous communities. The work ends with a full analytical index.

This new edition does not include any major new features with respect to its essential content. As regards domestic law, mention should be made of legislation of the autonomous communities on the protection of minors and international adoption. As for conventional law, the book only includes texts that are in force for Spain, and there are no significant contributions in this case. Nevertheless, the prologue to the seventh edition does refer to the bill on

international judicial cooperation in civil matters and to the new bill on civil procedure, in addition to the following international conventions which have not yet come into force for Spain: the Convention on insolvency proceedings, done at Brussels on 23 November 1995, the new Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, of 19 October 1996 and, finally, the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, done at Brussels on 26 May 1997. For this new edition, the information contained in the footnotes and the consistencies have been carefully revised – an essential task bearing in mind the broad range of regulations that characterises our system. References to the States party to multilateral international conventions have been updated to 30 June 1997.

CALVO CARAVACA, A.L. and CARRASCOSA GONZÁLEZ, J., *Introducción al Derecho internacional privado*, (An Introduction to Private International Law), Comares, Granada 1997, 758 p.

ESPINAR VICENTE, J.M., *Ensayos sobre teoría general del Derecho Internacional Privado. (Breve introducción al Derecho internacional privado contemporáneo, con especial referencia al tratamiento de las relaciones de familia)*, (Essays on the General Theory of Private International Law. [A Brief Introduction to contemporary Private International Law, with special reference to the Treatment of Family Relations]), Civitas, Madrid 1997, 174 p.

In five essays and a concluding chapter, Professor Jose María Espinar Vicente takes an in-depth look at the methods of private international law with what he describes as the intention of “ascertaining the elements of a crisis and deciphering what direction it is going to take immediately” (p. 168). He thus explains, from a historical perspective, the different techniques for solving situations in international legal transactions and then proposes his own approach.

The first essay (“By way of an introduction to the history and rational fundamentals of private international law”) gives an account of how the object and method of this discipline have been understood from its origins to the establishment of the multilateral method as the paradigm of conflict solving. The second essay (“An approach to the genesis of the dominant conceptions of modern doctrine”) precisely sets out to decipher this paradigm. The author focuses his attention on the work of F. K. von Savigny, which he examines in great detail. The third essay (“The development of a paradigm in crisis”) describes doctrinal constructions, mainly in the second half of this century, which centre on the inability of the multilateral method to find a satisfactory response to the problems of international transactions.

This review of private international doctrine is the basis for the fourth and fifth essays (“Factors which determine the need for structural change” and “An

approach to the new private international law”), which are the most interesting as the author describes his own remedy to the problems of greatest concern to the science of private international law. The solution proposed is based on the observation of the changes international society has undergone and on the perception of foreigners by the forum and, in general, is based on a shift from territorial solutions to international transactions to a material analysis of them. The central reference for this analysis is the principles and values enshrined in the Spanish Constitution, in which the values of a social model seem to prevail over those of a liberal model of law. Furthermore, the position of aliens in our basic rules is different from the traditional one, since they are not subjects without legal systems or opposed to the national systems, but persons with very similar rights to those enjoyed by nationals.

Under the heading “By way of a conclusion” Professor Espinar Vicente includes some interesting thoughts on the problems arising from the multicultural society. According to the author, the solution should be based on incorporating into the system foreign rules that cover the specific cultural features of the human groups, though in no way amending the corpus of rights and freedoms enshrined in Title I of the Spanish Constitution, which, by virtue of article 13, has been extended to foreign nationals.

Finally, the author endeavours to compare his conclusions in the theoretical field with the existing practice in a sector of the legal system which, once more, is an excellent testing ground: family law. This effort makes the trials very useful, not only for theoreticians of the discipline but also for those who are ultimately entrusted with solving the real problems of international transactions: judges and State authorities.

ESTRADA CARRILLO, V. and ADAM MUÑOZ, M.D., *Código de extranjería (Ley y Reglamento. Legislación complementaria. Concordancias. Formularios. Índice analítico)*, (A Code for Aliens [Law and Regulations. Complementary Legislation. Agreements. Forms. Analytical index]), 3rd ed., Trivium, Madrid 1997, 590 p.

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