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Book's review

ABEGÓN NOVELLA, Marta, *Los efectos de los conflictos armados en los tratados de protección del medio ambiente*, (Atelier, Barcelona, 2022, 270 pp.)

An old Latin phrase goes “*inter armas, silent leges*,” which is usually translated into English as “in times of war, the law falls silent.” This was largely true under the most classical international law, when States concluded only a few treaties that were usually bilateral and sought to address their own particular reciprocal interests. At that time, it was understood that the outbreak of an armed conflict between State parties automatically led to the termination or suspension of their treaties. Under contemporary international law, however, this approach has been changing. On the one hand, the international law of armed conflicts, including international humanitarian law, has been designed and developed precisely to govern in times of war. On the other hand, States currently conclude numerous bilateral and multilateral treaties on the most diverse subjects and these treaties are intended, on many occasions, to protect the general public interests of the international community as a whole, such as the so-called multilateral law-making treaties. In the current context, therefore, what effects does the outbreak of an armed conflict in one or more State parties have for international treaties of such diverse nature? The 1969 Vienna Convention on the Law of Treaties (VCLT) did not delve into this thorny issue. In 2004, however, the International Law Commission (ILC) did begin to address the issue, and in 2011, on second reading, it approved its Draft Articles on the Effects of Armed Conflicts on Treaties, which include provisions in favor of the operation of treaties in the event of armed conflicts, but do still leave ambiguities or uncertainties on the issue.

With this book, Dr. Marta Abegón Novella, currently Serra Húnter Lecturer in Public International Law at the University of Barcelona, delves into this complex aspect in the law of treaties, analyzing the legal effects of armed conflicts on the operation of a specific type of international treaties, treaties for the protection of the environment and, in particular, multilateral law-making treaties in the area.

The book begins with a prologue by Dr. Ángel J. Rodrigo, Associate Professor of Public International Law at Pompeu Fabra University (UPF) of Barcelona, who recalls that the monograph originated in research initiated by the author with her doctoral thesis, which was supervised by Dr. Rodrigo himself and defended at the UPF, earning the highest qualification from a jury made up of the following doctors: Oriol Casanovas, Professor of Public International Law at the UPF; Jorge Cardona, Professor of Public International Law at the University of Valencia; and Jean-Marc Sorel, Professor of Public International Law at the University of Paris I (Panthéon-Sorbonne).

Building on and updating her thesis research, the book follows a rigorous legal methodology and masterfully handles very diverse primary sources (international treaties, soft law texts, documents of international organizations, documents on vacillating State practice, jurisprudence, etc.) and numerous secondary sources, including a good many doctrinal references on treaty law, the various types of international legal obligations and the main international environmental treaties. At the same time, it is important to

stress the originality of the book, which deals with an issue on which specific doctrine is still scarce.

After the general introduction, the book is divided into three parts, each made up of an introduction and two chapters. The first part addresses the codification of international norms relating to the effects of armed conflicts on treaties in general. After observing that the outbreak of an armed conflict has traditionally been seen as an autonomous cause of termination or suspension of the operation of treaties, Chapter I takes a historical tour of the process by which the issue was codified, identifying the first doctrinal approaches, the resolution of the Institute of International Law (IIL) approved in Christiania in 1912, the exclusion of the issue from the VCLT, the resolution of the IIL approved in Helsinki in 1985, and the ILC's preparation of the previously noted Draft Articles of 2011. Chapter II focuses on the ILC Draft Articles, examining their substantive principles and procedural rules. In particular, the author analyzes the general principle according to which "the existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties" (Art. 3) and the provision regarding the "continued operation of treaties resulting from their subject-matter" (Art. 7). Specifically, Art. 7 is configured as a presumption of the continuity of certain types of treaties, such as those incorporated in the Annex with an indicative list of twelve categories, including, for example, "multilateral law-making treaties" and "treaties relating to the international protection of the environment". As the author observes, this presumption has been formulated as a "rebuttable" presumption (*iuris tantum*), since the fact that "a treaty can be subsumed within one of these categories does not necessarily and automatically entail its continuity" (p. 72).

The second part of the book delves into the specific case of multilateral law-making treaties for the protection of the environment. Chapter III identifies the characteristics derived from their condition as treaties for the protection of general interests of the international community, such as the incorporation of collective obligations, which are not separable in bundles of bilateral relations and are assumed *erga omnes partes*. It also evaluates the particular characteristics of these treaties that derive from the environment being their object of protection. Next, it presents a selection of such treaties, including the International Convention for the Prevention of Pollution from Ships of 1973/1978; the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973/1979; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989; the United Nations Framework Convention on Climate Change of 1992; and the set of treaties that establish the Antarctic Treaty System. Chapter IV evaluates the state of the matter regarding the operation of treaties for the protection of the environment in the event of armed conflicts, observing the existence of a certain doctrinal consensus, but also the practice of States, which the author considers "incipient and heterogeneous" (p. 139), and international jurisprudence, where, according to the author, there is still no "clear statement" (p. 156) on the issue.

The third part analyzes the effects of armed conflicts on multilateral law-making treaties for the protection of the environment in light of the norms codified in the ILC Draft Articles of 2011. Chapter V analyzes the "continuity in operation" of such treaties in the event of armed conflicts, which should, in principle, be the most common situation, thanks to the general rules of the Draft Articles and the indicated *iuris tantum*

presumption of continuity established by Art. 7 and the Annex with its indicative list of certain types of treaties. In any event, Chapter VI analyzes the possible cases in which, exceptionally, there could be a termination, withdrawal or suspension of the operation of multilateral law-making treaties for the protection of the environment. Some of these cases may be clear (if, for example, there are express provisions contained in the treaty), but others raise questions of great legal complexity, which the author addresses in light of the “rules of interpretation of treaties” (p. 204) or “contextual factors related to the treaty and the armed conflict”, depending on the subject matter and other particularities of the treaty and the characteristics of the conflict (p. 209). The author also specifies the limits to the termination, withdrawal or suspension of the treaty, referring to the requirements of the *pacta sunt servanda* principle (which prepends suspension before termination and partial suspension before total suspension) and those conventional obligations that constitute, at the same time, obligations imposed by general international law (p. 218).

In the book's final conclusions, the author evaluates the Draft Articles of 2011 in a positive light overall, since the ILC's works have been in line with the evolution of the international community and its legal order, and reaffirm, in accordance with the doctrine and majority practice in the area, that “treaties for the protection of the environment are not automatically terminated or suspended in times of armed conflict” (p. 225). At the same time, the author is also critical of various aspects of the Draft Articles, observing, for example, the weaknesses of the “rebuttable” presumption of operability and defending the convenience of strengthening such presumption in order to bring it closer to what would be an irrefutable presumption (*iuris et de iure*) (p. 227). In any case, the author regrets that, for the moment, the Draft Articles of 2011 have not been reflected in a convention or formal declaration, although this is becoming quite common in the recent works of the ILC. The author does not discard that, in the future, an advisory opinion on the issue may be requested from the International Court of Justice in order to strengthen the *auctoritas* of the Draft Articles (p. 229).

Certainly, the consolidation of the general principle that armed conflicts do not affect the operation of environmental treaties will not prevent the environment from being one of the victims of many conflicts in practice. It is sadly well-known, for example, that there is rarely an armed conflict in which violations of peremptory norms of international humanitarian law do not occur. In any case, such possible attacks on the environment must be considered as internationally wrongful acts, violating, among others, collective obligations arising from international treaties that will generally remain in force.

In short, this book is an excellent legal analysis of an issue of great complexity and relevance in contemporary international law and it will stand as an unavoidable reference for anyone who wants to delve into the subject in the future.

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