

BENEYTO, José María; JIMÉNEZ PIERNAS, Carlos (dirs.) y GALIMBERTI DÍAZ-FAES, Sandra (coord.). *Derecho de los Tratados*, (Tirant lo blanch, Valencia, 2024)

In a previous volume of this *Yearbook*, I had the opportunity to review the first volume of a saga on public international law under the direction of professors Beneyto and Jiménez Piernas¹. Now, I have the pleasure to have in my hands the second volume of this collection devoted to the law of treaties. In this case, along with both directors, we are informed that Sandra Galimberti acts as coordinator, a somehow necessary editorial figure in this kind of collections, which accumulates numerous independent but somehow linked studies.

This volume 2 of the Collection – a *collection* of studies in itself –, begins with a prologue in which the directors explain the rationale and purpose of the so-called “Treaty of Public International Law”, a feature absent from the first volume. However, plausibly it may be, they simply state that this is an “open”, “inclusive”, and “non-sectarian” set of contributions on the law of treaties. This arguably explains why the contributions are arranged in a canonical yet straightforward manner, focusing not on a commentary on the 1969 Vienna Convention on the Law of Treaties but on key questions concerning the current law of treaties in international law. The editors further explain that the rationale is for each of them to have its own autonomy and to be able to be read as an independent work. Therefore, as an editorial option, should be accepted as it is, with its pros and cons.

If in the first volume – on the concept and *sources* of international law – I publicly wondered how treaties were not included, the publication of this second volume explains that absence. In a similar vein, this volume also has a gap – the relationship between treaties and domestic orders –; but, on this occasion, the editors do advance that it will be the subject of study in the next volume, whose imminent appearance they announce.

In this second volume, the law of treaties is comprehensive and aptly covered by the different contributions². It is done in a logically ordered manner, providing systematic clarity between chapters. That is, one finds what one expects to find in a scientific review of our main normative source in current international law. It is true that it would be enough to follow to a certain extent the order of the articles of the Vienna Convention of 1969, but this work stands out, not for being a conventional commentary, as we have already indicated, but rather an analysis of most essential elements regulated in that coding Convention.

¹ Mariano J. Aznar: “José María Beneyto y Carlos Jiménez Piernas (dirs.), *Concepto y fuentes del Derecho internacional* (Valencia, Tirant, 2022)”, *SYbIL* 26 (2022), pp. 332-338.

² Authors have all of them the double-profile of academicians and practitioners on international law.

For this, with the authorship of Spanish authors – with only two Hispano-American colleagues: ICJ Judge Gomez Robledo and OAS Legal Advisor Toro Utillano³ –, this volume offers some “transversal” chapters, with others more focused on particular questions of the law of treaties. Hence, among the first, we may find the chapters on the process of codification of the law of treaties, by Esperanza Orihuela; on the concept of treaty, written by Francisco Pascual; on the interaction between treaty and custom, written by Paz Andrés (and perhaps better nested in the first volume than in this second volume); or the last one in this volume, also by Francisco Pascual, on treaties and international organizations. Along with these contributions, all of them proposing and responding the main issues of these three seminal questions (what a treaty is, and how a treaty becomes “entangled” with other sources or interacts with other subjects), the rest of the chapters address main problems and solutions on current law of treaties: the conclusion and negotiation of treaties, as well as the means of expressing consent, by Araceli Mangas; the entry into force and effects of treaties, by Carmen Martínez; the provisional application of treaties, by Juan Manuel Gómez-Robledo; reservations and declarations to treaties, by Antonio Pastor; the interpretation of treaties, by Soledad Torrecuadrada; the amendment and modification of treaties, again by Antonio Pastor; and the “rescission” of treaties, by Luis Humberto Toro. In this last case, the title is misleading, perhaps because of the terminology used: first, when speaking of “rescission”, its author refers both to the nullity and to the termination and suspension of treaties, as well as to the procedures for settling disputes arising from what Antonio Remiro catalogued as “pathologies” of treaties. Second, the title of this chapter seems to limit the analysis to the inter-American system, but this is not entirely the case, since its author offers references to the general system contained in Part V of the Vienna Convention of 1969 as well.

Something similar happens regarding the final chapter of the volume – that titled “International organizations and treaty law: the tension between particularism and cross-fertilization”. Although the title is appealing, it does not effectively summarize the chapter’s intriguing analysis, that has more to do – as the author himself explains – with the presence of the principle of good faith and hierarchy in the application of international law in the various regional areas by regional courts and tribunals and the relationship between them. I sincerely but humbly believe that, first, the title does not do justice to the complex analysis that follows it; and, second, that perhaps its without doubt necessary presence in this collection would have been in another place.

The rest of chapters (and their titles) do perfectly perform their respective announced purpose. In conjunction, but perhaps not in context, they offer a complete explanation of what they reveal, including a critical analysis of main questions. However, in some chapters a more specific discussion is made on the practice in Spain or the European Union – for example the chapters on the conclusion of treaties and on their amendment and modification – or, as already noted, on the inter-American system (the chapter on the “rescission” of treaties). This is not a *fault* of the authors, but, interesting at they are,

³ The editors also advance to us in their prologue to this volume that next one will include more Ibero-American authors in its list of contributors.

editorial suggestions may help to find a homogenisation of future contributions in next volumes.

But besides these perhaps minor questions, those who may use this volume will find a scientific tool of great use to those who work with international treaty law, both on the theoretical and practical level. If Esperanza Orihuela tells us about the process of the codification of customary rules of treaties onto conventional rules, Paz Andrés later shows us that endless, back-and-forth relationship “entangled”, in her words between treaty and custom, to which Soledad Torrecuadrada also refers when analysing the rules of interpretation of treaties: those that the ICJ never tires of repeating are reflected in articles 31 to 33 of the 1969 Convention. To this, Carmen Capdevila adds her analysis of the sometimes-intimate relationship between treaties, and their respective hierarchical position among them. As she mentions –echoing her *maestro*–, treaties do not operate in the vacuum, something quite recently reminded by the ICJ when talking about “living instruments” and their linked “external rules”.⁴

This volume also aligns to the “temporal” line of treaties, as reflected in the Vienna Convention: born, application and death of treaties, with a respective chapter on each phase as indicated above. But, perhaps due to my personal current interest when writing this review, within this idea of “temporal” approach to the life of treaties, I miss a point which I find of particular relevance in current international law: that of subsequent practice. It goes beyond the individual questions of treaty interpretation, of relationship between treaties, or even of interaction between treaty and custom, all of them well addressed by different authors in this volume. It touches questions of treaty application in general in cases so relevant like the prohibition of the use of force and the UN Charter, the changes into the law of the sea and UNCLOS, some basics on human rights and international humanitarian law and the old vintage codes for cases of war, or some aspects of international environmental law and the expansive adoption of different subsequent agreements sometimes tangentially on the same subject matter. A dedicated chapter on the topic of treaties and subsequent practice would have been highly valuable, enriching both the theoretical framework of treaty law and the practical application of conventional rules in an ever-changing world.

Another comment (again: also influenced by my personal interest) could be around the logical and only mention of international treaties, leaving without analysis the phenomenon of Memorandum of Understandings (MoU). Their absence in this volume is perfectly assumed since it is dedicated to treaties, and exclusively to treaties. But it is true that, given today's rich practice on MoU, that their presence in State and sub-State practice is becoming really relevant, sometimes as a prelude to a future treaty, and that their legal regime is so interesting in comparison with that of treaties, I personally would have greatly appreciated a chapter, even a brief one, on non-normative agreements in current international law.

Finally, as in previous volume in this collection, each chapter normally include not only a complete and up-to-date array of references to primary and secondary sources

⁴ Request for an advisory opinion submitted by the Commission of Small Island States on climate change and international law, *ITLOS Reports 2024*, para. 130.

but a final list of main – classic and current – general publications on the law of treaties, which includes the rich contribution of Hispano-American doctrine to this source of international law.

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