the SPANISH YEARBOOK of INTERNATIONAL LAW

Comentarios a la Ley de Tratados y otros Acuerdos Internacionales (Ley 25/2014, de 27 de noviembre). By Andrés Sáenz de Santa María, P., Díez-Hochleitner, J. and Martín y Pérez de Nanclares, J. (eds.), (Madrid, Civitas/Thomson Reuters, 2015), 1063 pp. (includes e-book).

At a lunch I had the opportunity to attend on 15 October 2015, along with the three editors of this volume and other people involved in different capacities in Spain's external action, former Spanish Foreign Minister Manuel García-Margallo made an observation with which everyone in attendance could, in one way or another, agree. He said, "[a]t least now we have a law that, if they want, others can amend." He was right. As Antonio Remiro recalls in his general comment on the present volume, there had been seven previous attempts, of varying intensity, to pass such a law, all of which had failed "due to the end of the parliamentary session or the dismissal of the Foreign Affairs minister who had overseen the preparatory work [...]" ("*por el agotamiento de la legislatura, o el cese del titular de Exteriores que había auspiciado los trabajos preparatorios* [...]", p. 48, we translate).

The obvious fact is that, together with Law 2/2014, of 25 March, on the State's External Action and Service (*Ley de Acción y del Servicio Exterior del Estado*, BOE No. 74, of 26 March 2014) and Organic Law 16/2015, of 27 October, on Privileges and Immunity of Foreign States, International Organizations Headquartered or with Offices in Spain, and International Conferences and Meetings Held in Spain (*Ley Orgánica sobre privilegios e inmunidades de los Estados extranjeros, las Organizaciones Internacionales con sede u oficina en España y las Conferencias y Reuniones internacionales celebradas en España*, BOE No. 258, of 28 October 2015),[1] legislative output and the fulfilment of certain regulatory needs precisely in the area of Spain's foreign (legal) policy have provided legal analysts with a new, hitherto non-existent or fragmented legislative framework for their endeavours. Specifically in relation to the Law of Treaties (the abridged term we will use from hereon, for expository convenience), the present collective work contains more than enough data and arguments to support these legal operators in their analyses. It likewise lays out reasons to proceed, if necessary, to a critical review of the Law.

It manages to do all this by being both comprehensive and relevant in terms of timing, form and substance. With regard to timing, it comes out shortly after the law's enactment, having overcome the standard challenges involved in publishing a multi-authored volume such as this. As for form, not only do the people behind the effort have deep expertise on treaty law in Spain, in some cases they also participated directly in the drafting, review or improvement of the various drafts of the law. As the editors explain in the foreword, "[n]ot everyone who was involved is here, as not everyone could accommodate the inevitable publication deadlines, but everyone who is here was involved" ("*[n]o están todos los que son porque no a todos les fue posible acomodarse a los inevitables plazos de publicación, pero desde luego son todos los que están*", p. 10, we translate). Finally, with respect to substance, we are clearly dealing with a work of great intellectual depth, the product of many years of study of treaty

[1] See a comment in this *Yearbook* at 20 *SYbIL* (2016) 333-383 [doi: 10.17103/sybil.20.19].

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law in Spain, with generous helpings of theoretical work accompanied by on-point considerations, critiques and proposals for quick practical application. Indeed, this may be one of the work's main values: it is written with a firm grasp of the precedents, many of the authors having participated in practice, yet at the same time looks to the future.

In short, we are not dealing with a mere comment on Law 24/2014. Logically, the value of the work increases insofar as it offers a critical analysis of the Law on Treaties as it was ultimately enacted; however, each comment —as well as the work as a whole— also offers an equally critical assessment of treaty-making in Spain from the 1978 Constitution (and even earlier) to the present. Thus, anyone seeking to learn more about, amongst other things, aspects of the division of powers governing the negotiation, adoption and application of treaties in Spain; the various corrections the Spanish Constitutional Court has progressively pointed to in all these areas; the impact of Spain's accession to the European Union, as well as its participation in other international organizations; the back and forth concerning parliamentary oversight of the external treaty-making activities of the different governments; the complexity of self-executing treaties in a decentralized state such as Spain; or the scope of the "other international agreements" concluded by Spain and its sub-state entities, will find in this volume a thorough account provided by experts and even direct participants in the areas of both practice and legislative development.

None of the authors deprives the reader of critical thoughts —in the proper sense of the word "critical"— on the precept under review: in most cases, the account of the rule is accompanied by a series of "final considerations", in which the author offers his or her informed opinion. Indeed, in testimony to the Minister's words, the volume offers a nearly complete roadmap for anyone seeking to improve the Law to follow, especially in light of the constitutional changes that appear to be on the horizon, which could well affect Title III, Chapter III of the Spanish Magna Carta, amongst other things.

A *comment* on a *comment* runs the risk of becoming, in a certain sense, an equally critical reference to the commented law itself. That is not the case here. The Comments on the Law on Treaties are organized article by article, except in certain cases, in which the comments on specific sections of articles were published separately, due to the significance of the section in question. This underscores the importance of each part of the precept and maybe, too, the lawmakers' error, insofar as they failed to recognize that importance and realize that perhaps it merited an article of its own. The present volume reflects this in another smart choice in terms of its structure, specifically with regard to Articles 3, 5, 23, 30 and 33. The rest is organized according to the Law and is thus divided into titles, chapters, articles (and sections), and additional, repeal and final provisions. However, the logically fragmentary nature of the precept-by-precept analysis does not detract from the expository flow or even the critical coherence of the volume as a whole. Thus, whilst the editors cautiously entitled the work *Comments*, in the plural, it is in fact an excellent, comprehensive, harmonious whole (above and beyond individual differences) that might well have been called *Comment*, in the singular.

The authors agree on several critical points that, come the time, should be taken into account for future improvements of the Law: the asymmetry of the text of certain precepts; the mere literal

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transposition of the terms of the 1969 Vienna Convention on the Law of Treaties; the repetition of certain precepts; the role to be given to the parliamentary process, and the greater involvement of the members of both houses in it; the still complex constitutional anchoring of certain precepts (such as provisional implementation); the role of Spain's autonomous communities; the relative vacuum with regard to agreements concerning the European Union; or the criticism of the concept, classification, authorization and publication of international administrative agreements. Although each comment spells out the *what* and *why* of each critique, it might have been nice —given the political times we are living in 2016— if the volume had also included a final proposal *de lege ferenda* on possible lines of constitutional reform to incorporate treaty-making into the Spanish Magna Carta as it truly deserves.

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