

Elena Conde Pérez. ***La denuncia de los tratados. Régimen en la Convención de Viena sobre el derecho de los tratados de 1969 y práctica estatal.*** Madrid: Congreso de los Diputados, 2007. Pp. 258. €9. ISBN: 9788479433031.

Treaties are the major legal instruments governing inter-state relations and an indispensable tool for diplomacy: since 1945 some 54,000 treaties have been registered with the United Nations, still representing only about 70 per cent of treaties which have entered into force.¹

Recently, there has been renewed doctrinal interest in the general law of treaties. It is evidenced by the spread of commentaries on the Vienna Convention on the Law of Treaties (VCLT), including O. Corten and P. Klein's major three volume commentary of 2006 in the French language, M. Villiger's commentary of 2009, and the forthcoming updated English translation of Corten and Klein which is announced for the autumn of 2010. Aust's *Modern Treaty Law and Practice*² may also be mentioned here. This new wave of publications is remarkable given the fact that for more than 30 years Sinclair's *The Vienna Convention on the Law of Treaties* was *de facto* the only authoritative treatise on the Convention.

Notwithstanding the recent scholarly interest in the general law of treaties, only a few monographs specifically on treaty termination have been published. These were mostly dedicated to specific aspects of denunciation.³

¹ A. Aust, *Modern Treaty Law and Practice* (2nd edn, 2007), at 1.

² *Ibid.*

³ See, e.g., C. Feist, *Kündigung, Rücktritt und Suspendierung von multilateralen Verträgen* (2001); M. Goma, *Suspension or Termination of Treaties on Grounds of Breach* (1996); N. Kontou, *The Termination and Revision of Treaties in the Light of New Customary International Law* (1994); H. Pott, *Clausula rebus sic stantibus: ein Versuch ihres Wesens, ihrer Voraussetzungen und ihrer Rechtsfolgen* (Art. 62 WVK) (1992); and A. Vamvoukos, *Termination of Treaties in International Law: The Doctrines of Rebus Sic Stantibus and Desuetude* (1985).

Against that background, Elena Conde Pérez's investigation of the VCLT's regime of treaty denunciation addresses an important short-coming.

The author examines comprehensively the different forms of treaty denunciation with particular focus on the termination/withdrawal grounds under general international law. While emphasis is laid on the grounds which are contained in the VCLT – denunciation of a treaty containing no provision regarding denunciation (Article 56) breach of a treaty (Article 60), impossibility of performance (Article 61), fundamental change of circumstances (Article 62), and *ius cogens superveniens* (Article 64) – some mention is also made of possible denunciation grounds which are not included in the VCLT: *desuetudo*, armed conflict, territorial changes, and breach of consular or diplomatic relations.

La denuncia de los tratados is structured rather classically. Chapter II – which as regards extent and content forms the central chapter of the book – is dedicated to the different denunciation grounds. Other chapters deal with formal/procedural requirements of denunciation (Chapter III), dispute resolution (Chapter VI), and the consequences of termination (Chapter VII). One chapter examines treaty denunciation under Spanish law (Chapter V); another discusses the treaty denouncing capacity of subjects of international law (Chapter IV). A preface (*Prólogo*) by L.I. Sánchez Rodríguez provides a general introduction to the topic. Also, a rather extensive bibliography including Spanish, French, and Italian references is provided, while an index and a table of treaties and cases are missing.

Elena Conde Pérez meticulously compiles relevant materials and oeuvres on treaty denunciation. She provides a good overview and assembles relevant case law concerning the different denunciation grounds. In doing so, she also makes certain attempts at systematization, in particular when classifying possible treaty clauses which allow for denunciation (at 40).

Given the abovementioned paucity of research, the book fills an important gap in the existing literature: even more so, as it

addresses issues which have not been extensively dealt with so far. It discusses the role of the depositary (including the problem of multiple depositaries) in the denunciation procedures (at 156 ff); the capacity of parties to denounce a treaty (including protectorates, non-recognized governments, or governments in exile) (at 162 ff); the problems of denunciation of mixed agreements (at 167 ff), and denunciation by states which are not parties to the treaty (e.g. in cases where obligations arise for a third state out of a provision of a treaty in accordance with Articles 35–37 VCLT) (at 171 ff); as well as denunciation by other subjects of international law, such as national liberation movements, occupied states, or states under *Tutela* (territorial administration) (at 172 ff). Furthermore, the analysis and description of Spanish procedures and institutions provide relevant insights into the Spanish practice of treaty denunciation (at 175 ff).

Regrettably, however, Conde Pérez does not go into much depth in her analysis. She remains rather descriptive when examining the case law and partly restricts herself to enumerating the elements of the relevant provisions of the VCLT (see, e.g., the discussion of the denunciation procedure and system for the resolution of conflicts (Articles 65–68 VCLT and annexes) (at 195, 205 ff). Doctrinal problems are barely touched upon, such as the question whether the term ‘object’ in Article 61 VCLT also comprises legal regimes; the relationship between Article 62 and treaty specific termination clauses in cases of fundamental changes of circumstances; or issues linked to the broad framing of the provisions concerning the consequences of termination (Articles 70, 71 VCLT). In part, this may be explained by the limited case law and practice, as many of the VCLT’s provisions in Part V (Termination, Suspension and Withdrawal) have rarely – if at all – been relied upon and applied. For example, the VCLT’s system on the resolution of conflicts has never been used and certain theoretical problems thus have not been tested in practice. Still, they remain of considerable academic interest and are not sufficiently dealt with in *La denuncia de los tratados*, which addresses

only a few of the legal problems linked to the different denunciation grounds.

Likewise it is regrettable that the conclusion (at 229 ff) does not go much beyond what has already been said before. In addition, Conde Pérez’s final appreciation of the VCLT’s system of denunciation as confused, incomplete, and ambiguous (at 241) seems too extreme. Her claim also lacks sufficient substantiation. For instance, she fails to mention the difficult balance the drafters of the VCLT had to strike between generality and completeness. As a general treaty supposed to regulate a multitude of different situations, the VCLT’s denunciation regime necessarily had to be kept rather abstract and general. Still, the VCLT lays out guiding rules for international practice. Thus, other authors arrived at rather different conclusions: the VCLT – including the denunciation regime – was held to be the ‘bible of practitioners’, the ‘prime achievement of the International Law Commission’, whose ‘intelligence of . . . drafting has enabled states to continue or modify their practice without distorting or departing from the rules of the Convention’.⁴

In a nutshell, it is mainly the assemblage of relevant case law and the references to works on treaty law in Spanish, French, and Italian which make *La denuncia de los tratados* an important contribution to the existing literature on treaty termination. With respect to the doctrinal problems surrounding treaty denunciation the book, however, generates only a few additional insights.

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⁴ Aust, *supra* note 1, at 7–8.