

## 34 REVIEW OF THE MONOGRAPH ON ‘THE EFFECT OF ARMED CONFLICTS ON INTERNATIONAL TREATIES’

*Zsófia Eszter Kémeri\**

**Szalai Anikó: A fegyveres összeütközések hatása a nemzetközi szerződésekre, Pólay Elemér Alapítvány, Szeged, 2013, p. 194; ISBN 978-615-5300-07-3**

The monograph of Anikó Szalai is significant because there has never been any Hungarian work written in this topic in that comprehensive way. As far as the author emphasizes in the first part of the writing, there are no more, than a couple of pages about the effect of armed conflicts on international treaties in the domestic books which are about international public law. The reason for this may be the fact that the topic is very complex and complicated with a diverse historical background. I am convinced that the special international nature of the monograph makes it difficult to find Hungarian sources and that is why Anikó Szalai uses plenty of sources in foreign languages, in a circumstantial way.

First of all I have to say that the law of armed conflicts is an ancient part of international law, and that is why summarizing it in a complex *acquis* is so difficult. Reading the title, it seems to me that the monograph is about analysing the topic in a theoretical way, but after the first couple of pages I realized that the author tries to submit the topic through some practical examples. The International Law Commission started to examine the effect of armed conflicts on international treaties in 2004 with the ‘leadership’ of Ian Brownlie at first.<sup>1</sup> The final resolution was established by Lucius Caflisch which was adopted in 2011. The book of Anikó Szalai appeared two years later, so the novelty of it is undeniable. According to the author, she would like to create a recommendation about the topic, and it seems to me that she can implement it in the horizon of the draft articles on the effect of armed conflicts on treaties of the International Law Commission.<sup>2</sup> In my view, this is the reason why the book is so scientific, which may make it difficult to understand by laic

---

\* PhD student, University of Debrecen, Géza Marton Doctoral School of Legal Studies.

1 Anikó Szalai: Effect of the World Wars on International Treaties of Hungary, *Miskolc Journal of International Law*, Vol. 5 (2008), No. 2, 98-108, [www.uni-miskolc.hu/~wwwdrint/MJIL12/20082szalai1.pdf](http://www.uni-miskolc.hu/~wwwdrint/MJIL12/20082szalai1.pdf).

2 Draft Articles on the Effect of Armed Conflicts on Treaties, Yearbook of the International Law Commission, New York and Geneva, 2011.

people, due to the fact that the phenomenon related to the armed conflicts usually comes up in the relationship between states instead of in the individuals' everyday life.

In the first part of the monograph the author examines the definitions and theoretical argumentations related to the topic which are almost related to systematic researches. The rule of war has already become important in the ancient times, when Cicero was the first who framed the following basic principle: 'inter arma inem silent', which means that the law remains silent during war.<sup>3</sup> Thanks to this principle, international treaties had been terminated between the states for a long time. Anikó Szalai tries to review the establishments and its relations to the armed conflicts expansively which are the most important components of the topic. In my opinion, although this part of the book is a little bit longer in comparison to the other ones, it is necessary to understand the importance of the monograph. Some of the contrasting between the establishments, the summaries in the end of the chapters and the precise background makes it easy to way around in the topic which would be difficult without these introductions. It is beneficial to start from her point of view using the 1969 Vienna Convention on the Law of Treaties. She says that the definition of armed conflict contains the non-international conflicts besides the international ones. I definitely agree with her statement 'nowadays it is unimaginable that some of the states are outside of an international conflict.' According to Anikó Szalai, if there are some states without having any bilateral agreement between them, there are plenty of multilateral agreements which connect all of the states (at least the Charter of the United Nations) (p. 51). The way that the author examines the problems from the point of view of the third states (which are outside of the armed conflict) from chapter to chapter, enables us to get complex information about the question.

After the theoretical background, the next part of the monograph contains specific rules and suggestions about the regulation of the problem, created by the actor. First of all the author discusses the question of which solution would be more beneficial during the armed conflicts according to the operative regulation: does the treaty terminate or suspend? Anikó Szalai does not agree with the International Law Commission. The draft articles on the effect of armed conflicts on treaties<sup>4</sup> established that 'the treaties could terminate owing to the armed conflicts' (p. 66). According to Anikó Szalai, suspension is the solution in these situations, arguing with the problems caused by the termination of treaties. She widely covers the aspects with which we could decide the suspension of the treaties ratified by those participants who have conflicts with each other. Furthermore she analyses in depth the types of treaties which have to be applicable during the armed conflict too. She does it by combining the draft articles on the effect of armed conflicts on treaties and her

3 Anikó Szalai: *A fegyveres összeütközések hatása a nemzetközi szerződésekre*, Pólay Elemér Alapítvány, Szeged, 2013, 14.

4 Draft Articles on the Effect of Armed Conflicts on Treaties, Yearbook of the International Law Commission, New York and Geneva, 2011.

34 REVIEW OF THE MONOGRAPH ON 'THE EFFECT OF ARMED CONFLICTS ON  
INTERNATIONAL TREATIES'

own-created system, which contains twelve treaties as exemptions. Although it could be strange that the treaties of friendship is one of them, but the author discovered plenty of examples in front of international tribunals. Notwithstanding I think that the most questionable treaties are the private law treaties in relation to the question of application. Anikó Szalai analyses this part of her thesis in a larger subsection of the book with plenty of examples *inter alia*, the case of *Clark v. Allen* and *Techt v. Hughes* in front of the Supreme Court of the United States of America. This chapter is specific in comparison to the other ones: in that case we have to start studying on a national scale instead of practice of international law. This fact could guide us to another part of international law: according to Anikó Szalai, 'this is a legal regulation for which the state accepts typically domestic law provisions.' This means the appearance of the relationship of international law and domestic law. In the case above, judge Cardozo establishes one of the most important rules of international law: if a treaty is operative, we have to use this instead of the provisions of domestic law.<sup>5</sup> Due to the fact that it would be another moot point of international law, Anikó Szalai stops at this point when she mentions the relationship of the international law and domestic law only in few sentences.

It is undeniable that the author collects the provisions of the material law thoroughly, but during the examination of the relationship between armed conflicts and treaties, it is very important to make researches about the procedural part of the regulation. In the next part of the book, Anikó Szalai draws up some proposals to make special suspensive provisions related to the treaties, which would be necessary to apply during the armed conflicts. She finds that we might use the 1969 Vienna Convention on the Law of Treaties with modified provisions in these situations. The regulation of the notice is a hard question during the armed conflicts, but I am convinced that the solution of Anikó Szalai is totally reasonable. In my view – due to the cases in the book – we could imagine the situation when the state realizes later that they would have suspended the treaty. That is why I agree with the International Law Commission which said that the states should avoid rush decisions because it might be necessary to think about the effects of armed conflicts on international treaties. Notwithstanding I believe that the proposal of Anikó Szalai could be viable in practice. She finds that nowadays the states have enough telecommunication equipment with which the notice could arrive in 10-15 days. What is more, according to the author it would be enough to suspend the questionable part of the treaty, which seems a logical step notwithstanding the fact that maybe it requires more administration tasks.

The monograph might be more significant with the fact that in the next chapter the author makes some in-depth research about the practice of states. According to the historical background between the First and Second World War, states preferred to apply the

5 Anikó Szalai: A fegyveres összeütközések hatása a nemzetközi szerződésekre, Pólay Elemér Alapítvány, Szeged, 2013, pp. 99-103.

ZSÓFIA ESZTER KÉMERI

termination of treaties. After the Second World War, they started to apply the suspension of treaties. Taking everything into consideration, the practice of states was not so uniform. The author analyses the Hungarian practice too, in relation to the armed conflict with Yugoslavia. Furthermore we can read about the attitude of Hungary in relation to the draft articles on the effect of armed conflicts on treaties. According to this, Hungary welcomes the importance of the clarification of the relationship between the armed conflicts and international treaties, and finds that non-international conflicts should also be covered by the draft articles (p. 140).

The author does not stop at this point and she discusses the problem of treaties between states and international organizations. Although in the first part of the book she mentions that she would have liked to examine the treaties between states only, I definitely think that making some research about international organisations is a beneficial solution, because they are one of the most important subjects in international law.

Despite the fact that this topic is not only related to international law, but civil law and the rules of procedure too, the style of the book makes it easily understandable. Diversified and complex knowledge is needed to build the monograph in this way. It might be hard to find the regulation which could help in this complicated dispute: the basic principle of *pacta sunt servanda* is always operative, but there could be exceptions in these circumstances. The draft articles on the effect of armed conflicts on treaties of the International Law Commission means a huge step to find the final solution to this problem, but the book of Anikó Szalai – which fills up a space in Hungarian international law – highlights that there are many points of it which should be developed.