

THE YEARBOOK OF POLAR LAW, VOL. 3.

Gudmundur Alfredsson, Timo Koivurova and Kamrul Hossain (editors). 2011. Leiden/Boston: Martinus Nijhoff Publishers. 738 p, hardcover. ISBN 978-90-04-21077-6. €195

The *Yearbook of Polar Law, Vol. 3*, is the third output in the series that, by and large, builds on the annual Polar Law Symposia, held at the University of Akureyri, Iceland. Compared to its predecessor (Alfredsson and others 2010) the scope of this 2011 volume has expanded drastically to almost twice the size. Also, while in 2010 the primary focus lay on resources and associated governance, this volume deals to its largest part with human rights and the rights of indigenous peoples in the Arctic. Only a smaller part touches upon Arctic governance issues.

The book is divided into four sections: A 'General Part', 'Articles', 'Recent Developments in Polar Law' – which presents the establishment of the Polar Law Institute in Akureyri and the establishment of the Arctic Law Thematic Network under the auspices of the University of the Arctic –, and 'Book Reviews'.

The 'General Part' holds the Editors' note which sets the stage for the overall theme of the book – human rights and good governance – by stressing problems regarding the implementation of human and indigenous rights in the Arctic. The editors make clear that given the differences in indigenous rights applications that Arctic Council could play a vital role.

Given the extent of the volume, it is not possible to present all contributions to the 'Articles' section here (the sections 'Recent Developments in Polar Law' and 'Book Reviews' are neglected in total), which starts with a contribution by Möller who presents an overview of different cases before the Human Rights Committee (HRC) dealing with indigenous rights, based on the International Covenant for Civil and Political Rights (ICCPR) and their respective outcomes. While these are not all Arctic-related, they are nevertheless of relevance for an Arctic context and under which criteria complaints are admissible before the HRC. This is indeed very helpful for practitioners and scholars engaged in human rights issues and a valuable resource that can help to put human rights into practice.

Bankes focuses on property rights of indigenous peoples and emphasises that there are two streams for protecting indigenous peoples' rights: one specifically designed for indigenous peoples; one in the context of universal human rights. Focusing on the human rights dimension, he shows that by analysing the European, Inter-American and African treaty regimes that the American system is more accommodating for indigenous grievances than the European. Although there is a lack of experience, the trend in the Africa system goes towards that applied in the Americas.

Zupanačič ventures into the theory of causation in law in the context of environmental degradation and associated human rights issues. He shows how the legal system lags behind scientific and technological advancements in the adjudication on causation-matters, which he claims to often contradict common sense and within itself causes human rights issues. While there are no polar references in this contribution, it is of great significance for understanding judgements relating to indigenous peoples and the environmental degradation of their

traditional lands. The article is however somewhat tiring to read due to the absence of any sub-heading.

The application of the conceptually rather recently established rights to environment and development is tackled by Hossain. He makes clear that these rights are inextricably interlinked with the right to self-determination of indigenous peoples. While there are still significant shortcomings, the Arctic Council's permanent participants indicate a trend towards successful application of these rights. Participation in decision-making is taken up also by Sweptston, who provides an interesting overview of the historical involvement of the International Labour Organization (ILO) in indigenous matters. He then contextualises indigenous participation based on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention No. 169 concerning indigenous and tribal peoples. Sweptston concludes that also in Arctic countries the practical implementation of the right to participation shows significant shortcomings. In how far this is the case in the Nordic countries the reader may refer to Tanja Joona's dissertation on the ILO Convention No. 169 in a Nordic context (Joona 2012).

Heinämäki takes the reader to understand the history and role of indigenous peoples in the organizational structure of the state-centred UN system. She stresses that the turning point was the adoption of the UNDRIP in 2007, since indigenous peoples actively participated in drafting this international law document on a similar level as the nation states. Although the UNDRIP is not legally-binding, there are indications that it will turn into customary law. The increase of political power can be exemplified by the contributions of indigenous peoples to knowledge creation of environmental change in the Arctic and their work in the Arctic Council. Moreover, there are attempts to make provisions of the UNDRIP binding, at least in a Nordic context, for example in the draft Nordic Saami Convention.

Another means of political participation constitutes the influence of indigenous peoples on development aid for the 'Global South' (page 297). Stepien in this context analyses the influence Sámi and Inuit exert on Norway's and Denmark's respective development aid policies. He claims that domestic changes with regard to indigenous peoples also impact development aid policies. In Norway, for example, political unrest changed the indigenous-state relations, which, in addition to an overall changing global discourse on indigenous peoples, reflects in state contributions to the Global South.

Arteau opens the context of indigenous land rights by providing a brief sketch on the Nunavik Autonomous government. Fitzmaurice then turns towards Russia to unveil the complicated legal environment for indigenous peoples in Russia and the difficulty in implementing the diverse laws. By drawing parallels to African States, she makes clear that albeit the existence of laws for the protection of indigenous peoples, as in Russia, effective protection does not necessarily occur. Improvement in protecting the rights of indigenous peoples can also happen even if such laws do not exist: as for example in the Democratic Republic of Congo. This article read in conjunction with Novik (2013) on indigenous peoples as political actors in Russia, the reader gains significant insight into the political and legal environment of indigenous peoples in Russia.

The book then leaves indigenous peoples rights and turns to Iceland. Johnstone and Ámundadóttir establish a correlation between the International Covenant on Economic, Social and

Cultural Rights (ICESCR) and its application during the time of economic crisis in Iceland. They use examples that show that there were significant difficulties in the interpretation and application of ICESCR during the 2008 crisis and that a lack of experience and expertise left response plans uncoordinated. The authors highlight that ICESCR provisions do not correspond to charity, but that a rights-based approach calls for well-established and functioning action plans.

Einarsson contextualizes human rights under the ICCPR in the Icelandic transferrable quota system which has significantly altered Icelanders' access to common fish resources through privatisation. He maintains that this system, in combination with other trends of privatisation, has notably contributed to the Icelandic economic collapse. He stipulates that the case of two fishermen who breached the quota system brought before the HRC reveal significant shortcomings of the Icelandic state in implementing the ICCPR. The response by the HRC criticised the Icelandic system and presented recommendations for improvement. These were not taken up easily by the Icelandic government, showing that the human rights bodies do not enjoy uniform appreciation. Indeed, by presenting the two most fundamental legally-binding human rights instruments, Johnstone/Ármondadóttir and Einarsson nicely show how also in democratic states with a good reputation in protecting human rights difficulties and shortcomings frame the realistic application of these.

The last section of the 'Articles' deals with Polar governance and Hildreth makes a strong point against the conclusion and likelihood of a comprehensive Arctic treaty. She states that a piecemeal approach is more feasible for the Arctic, focusing on energy, shipping and the improvement of existing legislation. With regard to oil, gas and shipping, Hildreth presents the current legal regime and identifies several gaps. Based on these complexities and the geopolitical state of the Arctic she refutes an Arctic treaty. In this context, she briefly considers the role of the Arctic Council and supports a narrowing-down of the mandate of the Arctic Council to scientific and policy research. Here, Axworthy's volume on the future of the Arctic Council can provide a more detailed scenario (Axworthy and others 2012). Hildreth's piecemeal governance scenario for the Arctic is also supported by Exner-Pirot (2012) and could be considered a real possibility for future governance.

While Graczyk focuses on observers and observer rules in the Arctic Council, Baastmeijer deals with the principle of intergenerational equity in the Antarctic Treaty System.

Duyck draws conclusion on governance in the Antarctic *vis-à-vis* Arctic governance and concludes that in spite of difficulties in comparing the two regions, important lessons can be learnt from the Antarctic, especially as regards the inclusion of non-Arctic actors in order to prevent a limited and closed system of governance.

Indeed, the research that the *Yearbook of Polar Law*, Vol. 3, presents is extraordinary! Especially for scholars of Arctic governance, human and indigenous rights and political sciences this book is of interest. But there are significant shortcomings in the marketing of the volume, which must be primarily directed to the publisher: Firstly, the exorbitant price of almost 200€ make it truly a very rare purchase. Especially for students this amount is unacceptable. Further, the accessibility for students is aggravated since there is no possibility to purchase individual articles online. Since the *Yearbook of Polar Law* is an annual publication, access to individual articles should be possible. Lastly, potential buyers are discouraged to buy the volume as there are no abstracts provided on the website <http://www.brill.com/yearbook-polar-law-volume-3-2011> (accessed July 31, 2013). These points are very unfortunate and make the *Yearbook of Polar Law* merely accessible to a group of people locked in an ivory tower. Given the important, challenging, necessary and so-well researched contributions, this should not be the case. (Nikolas Sellheim, Faculty of Law, University of Lapland, PO Box 122, 96101 Rovaniemi, Finland (nikolas.sellheim@ulapland.fi)).

References

- Alfredsson, G., T. Koivurova and N. Loukacheva (editors). 2010. *The Yearbook of Polar Law*. Vol. 2. Leiden/Boston: Martinus Nijhoff Publishers.
- Axworthy, T., T. Koivurova and W. Hasanat (editors). 2012. *The Arctic Council: its place in the future of Arctic governance*. Toronto: Munk-Gordon Arctic Security Program. URL: <http://gordonfoundation.ca/publication/530> (accessed 31 July 2013).
- Exner-Pirot, H. 2012. New directions for governance in the Arctic region. In: Heininen, L., H. Exner-Pirot and J. Plouffe. *Arctic Yearbook*. Akureyri: Northern Research Forum: 224–246. URL: <http://www.arcticyearbook.com/> (accessed 31 July 2013).
- Joona, T. *ILO Convention No. 169 in a Nordic context with comparative analysis: an interdisciplinary approach*. Rovaniemi: Lapland University Press.
- Novik, N. 2012. Indigenous peoples of Russia as political actors. In: Pelaudeix, C., A. Faure and R. Griffiths (editors). *What holds the Arctic together?* Paris: L'Harmattan: 85–92.