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Book Review

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The Arctic in International Law and Policy. Edited by Kristina Schönfeldt. Hart Publishing 2017. 1484 pages.

Most of us working in the field of international law and Arctic policy are acutely aware of the complexity of this field. In contrast to the other Polar region, Antarctica, which is governed by a fairly integrated Antarctic Treaty System, the Arctic is almost the opposite: it is governed by a plethora of various types of global, regional and bilateral international treaties and regimes, nation-state systems and indigenous customary law. In particular, the framework for international governance is challenging, as most issues need to be studied from the viewpoint of various levels of law and governance. There are also numerous actors, e.g. ranging from nation-states to indigenous organizations, environmental organizations and to non-Arctic states.

Many of us working in this field have had to struggle with this complexity, as so many diverse actors issue Arctic-relevant documents of varying types. We have all found our own ways of managing this complexity, mostly by having some sort of chaotic collection of our own, together with the knowledge of where to find which types of documents. Obviously this is not an ideal situation, but since there have not been collections of documents such as the one provided by Kristina Schönfeldt, we have had to live with that. Indeed, Schönfeldt's volume is, as far as I know, the first scholarly effort that offers us a comprehensive collection of documents related to Arctic international policy and law.

Schönfeldt's collection starts with a preface, abbreviations¹ and, in particular, a very long analytical introduction to the selected documents (64 pages altogether). This is a very welcome section of the volume, as it provides the reader with the context of the documents that follow as well as the relevant literature to enable the reader to delve further into a certain topic of Arctic governance. Schönfeldt makes clear at the beginning of the volume that the

¹ There is one small mistake in the abbreviations: ICC is said to mean Inuit Circumpolar Conference, which is the old name for the organization. In the analytical introduction, she uses the correct name, the Inuit Circumpolar Council.

book is intended to provide the reader with documents that pertain to the international governance arrangements of the Arctic, hence omitting “domestic legal and policy instruments that are applicable to and relevant for the Arctic”² — other than those domestic documents that pertain to international law and policy. In addition, she focuses mostly on documents that are still current, and not only of historical value.³

Overall, the long analytical introduction is a fine, and in fact a thorough, overview of those international policy fields that the collection of documents intends to cover. It is also clearly done by a scholar who is knowledgeable in the topics, to the extent that there are only very minor substantive issues that one could challenge. Schönfeldt uses the term 'permanent observer of the Arctic Council' in a number of instances in the analytical introduction, which in my opinion should no longer be used. This is simply because observer status is not permanent — it is regularly reviewed, and it can be postponed or an observer status can be terminated. She further divides this status to “permanent” and “*ad hoc*” observer, which is also no longer the correct view: an entity is either an observer or not.⁴

On p. xlvi the author claims that “The Northern Dimension serves also as an umbrella organization for the Arctic Council, the BEAC, the Council of the Baltic Sea States and the Nordic Council of Ministers”. In my opinion, the wording used here is too strong, as the Northern Dimension does not really function as such an umbrella organization for the various councils but is rather one co-operation layer that interacts with these other co-operation forums.

I also found myself to be in slight disagreement over how Schönfeldt characterizes the so-called 'EU Seals Ban dispute' and its end-result in the WTO dispute-settlement proceedings. After concluding that both the panel and the

² xl.

³ Ibid. She does, however, also include those documents that “illustrate the historical emergence of regulatory interest in a specific subject”.

⁴ xlv. Here one must note that the European Union’s application for observer status has not yet been accepted, but it has been received affirmatively. The EU is not an observer, but it is currently treated as a de facto observer, a so called 'observer-in-principle'.

Appellate body used different legal tests to examine whether the EU's measure is justified by the public morals exception set forth in Article XX(a) GATT, she argues that according to both of these bodies, the EU had failed to prove the exception. The reader is left with the feeling, as the author says on page lxx, that for the EU the Appellate Body, the report "was more a defeat than a victory". Yet, if one examines the final result of the proceedings, both the panel and the Appellate Body did find that the EU is justified to use animal welfare considerations to prohibit the selling and marketing of seal products within the common market. Hence, both of these bodies endorsed the EU's use of the exception of public morality under the WTO rules, which surely was the key issue to both parties, rather than the indigenous exemption, on which the Appellate Body most focused.

It is important to emphasize that these are minor points when one studies the very lengthy analytical introduction provided by Schönfeldt. Overall, it is written in a very comprehensive and thorough-going manner, and serves well the collection of documents that follows. Another chapter that precedes the documents section is a chronological review of major Arctic international policy and law developments from the 16th Century onwards. This, together with the analytical introduction, provides the reader with ample amount of information and knowledge with which to start penetrating the intriguing world of Arctic international governance. One minor aspect that, in my view, could have been better designed is the numbering of the parts before the actual documents, which as it stands is marked using Roman numerals. In my view, this is overly burdensome for a modern reader and should have been done using regular numbering in Arabic numerals.

The documents have been divided into 10 sections. In Section 1, the Arctic policy documents of Arctic and non-Arctic states are presented, while Section 2 outlines Arctic Cooperation documents such as those of the Barents Euro-Arctic Council and the Northern Dimension. One conspicuous omission here are the Arctic Council declarations, for which the author did not obtain permission to publish. On the other hand, all Arctic Council documents, not only declarations, can be found on a dedicated Arctic Council website. Section 3 focuses on maritime zones, especially the national legislation delineating the maritime zones of each Arctic coastal state, and Section 4 provides maritime

delimitation agreements between the Arctic coastal states. Section 5 covers the very timely submissions of four Arctic coastal states to the Commission on the Limits of Continental Shelf (CLCS), and how these submissions have been treated in the Commission. As the United States is not party to the UN law of the Sea Convention (UNCLOS), it cannot make a submission to the CLCS, also in respect to its Arctic waters.

Section 6 takes up Arctic shipping documents, mostly global and regional treaties that also apply in the Arctic and have been negotiated under the auspices of the International Maritime Organization (IMO). Additionally, the two agreements that have been negotiated under the auspices of the Arctic Council and that pertain mostly to marine areas are included.⁵ Section 7 covers multilateral and bilateral fishing agreements relevant in Arctic waters, which unfortunately now lack the signed Agreement on the Prevention of Unregulated Fishing in the High Seas of the Central Arctic Ocean, as this agreement was concluded after the release of this compilation. When further editions of this collection are done, these new developments should naturally be added.

Section 8 is about environmental pollution and is clearly the largest of the sections. Thereby it has been sub-divided into 1) the general marine environment 2) instruments relating to biodiversity, and 3) agreements and instruments relating to marine oil pollution and airborne pollution. Section 9 takes up the protection of the rights of Arctic indigenous peoples, whose presence in the Arctic is visible, also because they are permanent participants in the Arctic Council. Section 10 finally tackles the topic of maritime disputes. Even if most of these disputes have been resolved, there are still some left, well covered by the compilation. In my humble opinion, all of the most important documents can be found in this collection. The book ends with a carefully drawn up index.

⁵ Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (signed 2011) and the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (signed 2013).

Schönfeldt has collected an admirable number of Arctic documents in the volume she has edited. This is not an easy feat. It is difficult to make a clear distinction between the Arctic-relevant and non-relevant documents, as much of international law pertains to the Arctic in one way or another. I have myself suggested that we could see the Arctic law as a type of soft-discipline of law and policy, by which we could examine these different levels of law and policy but in a way that by making the Arctic as an object of our endeavours, we could better take into account the region's special characteristics. This would then enable us to promote policy and legal developments that would contribute to a more sustainable Arctic.⁶ Schönfeldt has, in my view, made a contribution in this respect as well by making her decisions as to which documents are most important to be added to a collection of documents about Arctic international law and policy. From the viewpoint of seeing the Arctic as an object of scholarly discussion, it would also be interesting to have other such endeavours, enabling us to compare which documents scholars view as the most important ones from the viewpoint of the Arctic.

My overall estimate of the collection of documents is very positive. This is the book that I would have loved to have had when I did my doctoral dissertation back in the 1990's. It serves the research needs of current early-career and established researchers and it is clearly extremely useful for any researcher interested in Arctic international law and policy. This is due to the fact that it not only contains vast numbers of relevant documents, the context of which is skilfully explained in the analytical introduction, but it also contains an intriguing chronology of relevant events in this field. It is easy to recommend this collection to any researcher interested in Arctic international law and policy.

⁶ Timo Koivurova, "Why and How to Study Arctic Law" in *Global Challenges in the Arctic Region; Sovereignty, environment and geopolitical balance* (edited by Elena Conde and Sara Iglesias Sánchez), pp. 11-16. Routledge 2017.